

**Meeting Date** (?) 09/27/2016

**Subject Matter**\* (?) Legal Services Contracts for Mathews and Freeland LLP  
This must match rolling agenda entry

**Department of Origin**\* WATER SERVICES

**Submitted By**\* Jayson E. Barfknecht

**Type of Meeting**\*  BCD  Special  Regular

**Classification**\*  Public Hearing  Consent  Statutory  Regular

**Ordinance**\*  None  First Read  Second Read  First & Only Read

**Strategic Initiative**\*  Public Safety  Service  
 Economic Development  Infrastructure  
 Quality of Life

**Agenda Item Description**\* Consider authorizing the Mayor to execute the Second Amendment to the FY2016 Legal Services Agreement with the law firm of Mathews and Freeland L.L.P dated November 2, 2015, to increase the total not-to-exceed amount of the Agreement to \$250,000; and to further authorize the Mayor to execute an Agreement for Legal Services with the law firm of Mathews and Freeland L.L.P for representation of the City of Bryan in connection with the ground water district, Texas Commission on Environmental Quality (TCEQ), and other water law-related matters in a not-to-exceed amount of \$250,000 for FY 2017.

**Summary Statement**\* For certain specialized areas, the City of Bryan relies on external legal expertise for counsel, recommendation, and representation. For example, the City pursued an application to amend its water utility certificate of convenience and necessity (CCN) with both Brushy and OSR (both issues now closed), the City of Bryan went through a process to obtain bed and banks (B&B) authorization to reuse the City's municipal return flows (i.e. the City's treated wastewater), and the City is continuing to follow Brazos River Authority's (BRA) pursuit of a system-wide permit for the Brazos River basin. The City of Bryan also is closely following the groundwater district and actions that may negatively impact the permitted water to the City of Bryan. These topics require the need to rely upon expert legal counsel specializing in State of Texas water law and a familiarity with water issues.

On November 2, 2015, the City entered into an Agreement for Legal Services with the law firm of Mathews and Freeland L.L.P. for the FY 2016. The Agreement includes billing fees by the firm up to \$300.00 per chargeable hour. Typically, the City's services are provided by Jim Mathews whose current billing rate is \$300.00 per chargeable hour. Other personnel rates, such as briefing clerk fees and paralegal fees, are \$75.00 per chargeable hour. Additionally, incidentals, such as photocopies and facsimiles sent are costs the City should expect to incur. Out-of-pocket expenses incurred and charged to the City include a fifteen percent (15%) overhead charge. This Agreement expires on September 30, 2016.

The FY2016 Agreement had an original not-to-exceed amount of \$49,000, and was amended by the Bryan City Council on May 9, 2016 to increase the not-to-exceed amount from \$49,000 to \$150,000. Year to date invoices in the amount of \$163,407.66 have already been billed for FY 2016, and additional invoices are anticipated through the remainder of the current fiscal year to cover pending legal matters. Staff recommends approval of the Second Amendment to the Fiscal Year 2016 Legal Services Agreement with the law firm of Mathews and Freeland, L.L.P. increasing the total, not-to-exceed amount of the Agreement to \$250,000.

City staff further recommends the City Council renew the annual agreement for the fiscal year 2017 in the increased not-to-exceed amount of \$250,000. This annual agreement, if renewed, will expire on September 30, 2017. Utilizing another firm at this stage in the B&B process, groundwater related issues, and other water-related items and issues could be detrimental to the City's progress. Additionally, another firm would need to become familiar with the City's pending agreements and applications.

The City has expended the following amounts on legal services with the law firm of Mathews and Freeland: 2009 - \$98,592.99; 2010 - \$37,480.01; 2011 - \$123,196.43; 2012 - \$54,823.22; 2013 - \$57,832.67; 2014 - \$104,622.35; 2015 - \$64,365.20; 2016 (YTD) - \$163,407.66. Water Services has \$150,000 budgeted in FY2017 for legal and contractual services. If expenditures exceed this amount and other line items do not make up the difference, a budget amendment will be needed in FY2017.

**Staff Analysis & Recommendation\***

Staff recommends approval of the Second Amendment to the 2016 Legal Services Agreement with the law firm of Mathews and Freeland increasing the total not-to-exceed amount of the Agreement from \$150,000 to \$250,000; and further recommends the approval of the proposed FY 2017 Agreement for Legal Services with Mathews and Freeland, L.L.P to provide legal representation in connection with the groundwater district and other water-related matters in the not-to-exceed amount of \$250,000. As a recognized expert in water legislation and other matters, the law firm of Mathews and Freeland, L.L.P provides specialized legal services beneficial to the City of Bryan.

**Options\***

(In Suggested Order of Staff Preference)

1. Approve the Second Amendment to the FY2016 Agreement for Legal Services and approve the 2017 annual Legal Services Agreement in the total not-to-exceed amount of \$250,000.
2. Do not approve the Second Amendment to the FY2016 Agreement for Legal Services or the FY 2017 annual Agreement and have City staff perform this work or utilize other outside counsel.
3. Approve the Second Amendment to the FY2016 Agreement for Legal Services and do not approve 2017 Agreement for Legal Services Agreement and have City staff perform this work or utilize other outside counsel.
4. Approve the Second Amendment to the FY2016 Agreement for Legal Services and approve the 2017 Agreement for Legal Services Agreement in a not-to-exceed amount less than \$250,000.
5. Do not have legal representation

**Funding Source\***

Water and Wastewater Operating Budget

**Attachments**

Mathews Freeland - Second Amendment to Agreement for Legal Services FY2016.docx	17.92KB
Mathews Freeland - Agreement for Legal Services FY2017.docx	20.37KB

Please detail attachments and note attachments available for viewing in City Secretary's Office:

1. Second Amendment to Agreement for Legal Service for FY 2016
2. Agreement for Legal Services for FY 2017

**Dept. Head Signature**



JAYSON E. PARFENECHT 09/15/16

**Deputy City Manager Signature**



Hugh R. Walker

**City Manager Signature**



**City Attorney Signature**



Janis K. Hampton