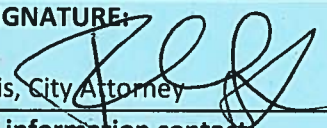


## REQUEST FOR COUNCIL ACTION

<b>TO:</b> Mayor via City Secretary		
<b>SUBJECT:</b> Approve an ordinance authorizing an Agreement for Professional Services with Bracewell LLP and the City of Houston in connection with litigation and claims against Genuine Parts Co., d/b/a NAPA Auto Parts	Page 1 of 2	Agenda Item
<b>FROM (Department or other point of origin):</b> Legal Department	<b>Origination Date:</b> May 16, 2016	<b>Agenda Date</b>
<b>DIRECTOR'S SIGNATURE:</b>  Ronald C. Lewis, City Attorney	<b>Council District(s) affected:</b>  All	
<b>For additional information contact:</b>  Patricia L. Casey, Sr. Assistant City Attorney (832) 393-6302	<b>Date and Identification of prior authorizing Council Action:</b>  N/A	
<b>RECOMMENDATION (Summary):</b> Approve an Ordinance authorizing an Agreement for Professional Services with Bracewell LLP and the City of Houston in connection with litigation and claims against Genuine Parts Co. d/b/a NAPA Auto Parts.		
<b>Amount and Source of Funding:</b> Payment to Bracewell LLP is contingent upon recovery of funds from the <i>City of Houston v. Genuine Parts Co.</i> litigation.		
<b>SPECIFIC EXPLANATION:</b> <p>The City Attorney wishes to enter into an agreement with Bracewell LLP (the "Firm") to provide legal services in its current representation of the City in litigation and claims against Genuine Parts Co., d/b/a NAPA Auto Parts ("GPC") in the lawsuit styled Case No. 4:16-cv-00694, <i>City of Houston v. Genuine Parts Co., d/b/a NAPA Auto Parts</i>, pending in the United States District Court of the Southern District of Texas, Houston Division (the "Agreement"). The Firm, which traces its origins to Houston, is one of the nation's leading law firms focusing on high-stakes complex litigation and enjoys a stellar reputation in the legal and business communities. The Firm has previously represented the City in litigation and non-litigation matters and has represented other entities in similar complex contract disputes.</p> <p>An audit of some of the categories of expenses charged by GPC under the City's 2011 contract with GPC revealed over \$1 million in overcharges for a one-year period. Further analysis has the potential to uncover additional significant overcharges, which will inform the City's damages and potential recovery in litigation against GPC.</p> <p>The Firm has agreed to represent the City on a contingency fee basis whereby the City would pay the Firm out of any Recovery after reimbursing expenses and cost from any recovery. The Firm's contingency fee includes reimbursement of expenses and costs plus: (1) 30% of a recovery if obtained before trial commences; or (2) 35% of a recovery if obtained after trial commences, including through any appeal. The fee arrangement reflects the Firm's willingness to share the City's risk in the litigation. If the City does not realize any recovery, then no fees will be paid, or expenses or costs reimbursed.</p> <p>In accordance with Texas Government Code Section 2245.106, the Firm's contingency fee may be limited if the Firm's hourly rates times the number of hours worked times a multiplier of four results in a lower value.</p> <p>Texas Government Code Section 403.0305 requires "a public agency," which includes a municipality, to submit contingency fee legal services agreements to the Texas Comptroller for review and approval. The City Attorney is confident that the Agreement submitted to City Council for approval will also receive approval from the Comptroller. In the event the Comptroller, however, requests changes that do not (i) impair the intended purpose of the Agreement, or (ii) require the appropriation, allocation or expenditure of any funds, the City Attorney is seeking Council authority to revise and re-execute the Agreement. The Agreement will become effective only upon final approval from the Comptroller.</p>		
<b>Finance Director:</b>	<b>Other Authorization:</b>	<b>Other Authorization:</b>



<b>Date</b>	<b>Subject:</b> Approve an ordinance authorizing an Agreement for Professional Services with Bracewell LLP and the City of Houston in connection with litigation and claims against Genuine Parts Co., d/b/a NAPA Auto Parts	<b>Originator's Initials</b>	<b>Page</b> <u>2</u> of <u>2</u>
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If the Texas Comptroller requests any changes, the City Attorney will submit to City Council a memo detailing the requested change, and a redline comparing the version submitted to Council today with the final executed version approved by the Comptroller along with the final executed version.

No settlement or resolution of the litigation will be undertaken without the approval of the City Attorney and the City Attorney has the ability to terminate the Agreement for convenience.

The City Attorney recommends that Bracewell LLP law firm represent the City in this litigation.

**M/WBE Subcontracting:**

Given the contingency nature of the Agreement, the Office of Business Opportunity ("OBO") has agreed to a goal modification of 5% M/WBE participation level for this Agreement. Bracewell LLP has designated the below-named company as its certified WBE subcontractor to achieve this goal:

<u>Name</u>	<u>Type of Work</u>	<u>Dollar Amount</u>	<u>Percentage</u>
Discovery Services of Texas, Inc.	Litigation support services	Unknown / Contingency	5%

OBO will monitor this Agreement.

**Pay or Play Program:**

The Firm has certified that it provides health benefits to eligible employees in compliance with City policy.