

COUNCIL ACTION FORM

SUBJECT: CHANGE ORDER TO PROFESSIONAL LEGAL SERVICES PURCHASE ORDER WITH BROWWINICK ON 161KV TIE LINE FRANCHISE

BACKGROUND:

The FY2008/09 Capital Improvements Plan includes a project to install a 161kV interconnection with MidAmerican Energy Company. In order to improve electric service reliability for our customers, there is the need for an additional transmission line to connect to the regional electric transmission grid. Following years of system impact studies, a route study, and substation and transmission line design work, the City determined that the best route for an additional transmission line extends from Ames to Ankeny. The project has been underway since 2004.

On July 2, 2008, the Iowa Utilities Board (IUB) issued a final ruling, effectively denying the City's petition for a franchise to construct its 161kV transmission line outside the City limits to northeast Ankeny. In its final decision, the IUB acknowledged the need for the line and did not contest the route specifically, but rather took issue with evidence of compliance with Iowa Code requirements as the basis for the initial route planning. On August 7, 2008, proposals were solicited for professional services to conduct a routing selection study conforming to Iowa Code and franchising requirements. On September 9, 2008, the City Council approved a contract with Burns & McDonnell to conduct a routing study as we again began a process for obtaining a franchise.

Members of the City staff interviewed representatives from two law firms that specialize in franchise representation. On September 3, 2008, City Council approved a retainer agreement for legal services with the BrownWinick law firm of Des Moines. At that time staff anticipated the cost of these services to be between \$60,000 and \$100,000. A purchase order was issued in the amount of \$50,000 to begin the work. Hourly rates for BrownWinick staff involved in this work have varied between \$160 and \$275 per hour. The agreement with BrownWinick provides that the City may be charged separately for items such as computer time, courier costs, copy/printing, document retrieval and related services as they are incurred.

In September 2009 (after the second routing study had been submitted to the IUB staff) legal counsel advised that the City should proceed with the process of preparing for public hearings and an appearance before the Administrative Law Judge (ALJ). At that time, \$61,000 had been spent and it was estimated that the total would be within the \$100,000 originally estimated for the contract. On September 22, 2009, City Council approved Purchase Oder Change Order #1, increasing the amount of the purchase order to \$100,000.

Due to continued delays in receiving a decision from the Iowa Utilities Board, on March 23, 2010, City Council approved Change Order #2, increasing the amount of the purchase order to \$150,000. Staff has recently approved Change Order #3 to the purchase order, in the amount of \$10,000.

Almost all of the \$150,000 which the City Council has authorized has now been spent for services provided by BrownWinick. A revised petition has been submitted and while staff had hoped to avoid public hearings, it now appears the hearings will be required. There still are five objectors to the route, and one property owner has not agreed to an easement and will require a subsequent condemnation hearing.

The principal attorney who has been heading the City's legal team, Mr. Philip Stoffregen, has years of experience in guiding franchise proposals successfully through the IUB process, and has been doing an outstanding job for the City. Mr. Stoffregen has provided an estimate of \$85,000 to provide additional services through the public hearings and our appearance before the Administrative Law Judge. Staff is requesting that Council approve Change Order #4, in the amount of \$85,000, and increase the purchase order amount to \$235,000. This will allow for legal services necessary to obtain the electric transmission franchise for the City to continue.

ALTERNATIVES:

1. Approve a change order to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the amount of the purchase order to \$235,000. The City will continue to be billed on an hourly services for services incurred in accordance with the agreement
2. Do not approve the proposed change order and ask staff for further information.

MANAGER'S RECOMMENDED ACTION:

It is in the best interest of both the City and of our electric customers to keep this interconnection project moving forward as quickly as possible. Customer reliability is in danger of being compromised by the limitations in import being placed on our current 69-kV southbound interconnection. The firm of BrownWinick has provided excellent service to the Electric Utility in the current franchise process. Seeking other legal counsel at this point could seriously impair the timely completion of this line.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, approving a change order to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the total authorized amount to \$235,000.