

COUNCIL ACTION FORM

SUBJECT: **LEGAL SERVICES FOR 161kV TIE LINE FRANCHISE**

BACKGROUND:

Due to complexities surrounding the City's installation of a 161kV interconnection with MidAmerican Energy Company in Ankeny, a substantial amount of outside legal services have been needed. In 2008 the City Council approved a retainer agreement for legal services with the BrownWinick law firm of Des Moines.

The original purchase order with this firm for legal services costs was \$50,000. Since that time BrownWinick has assisted the City through a protracted process of filings with the Iowa Utilities Board (IUB), presentations to an Administrative Law Judge (ALJ), and dealing with legal objections raised by property owners along the route of the new tie line. To date, Council has approved six change orders for BrownWinick's assistance with these additional legal actions, with a total of \$332,000 having been authorized by Council. Staff subsequently approved two additional change orders for a total \$34,000.

After eight years of work on the tie line project, a final decision was finally issued by the IUB on September 24, 2012. The IUB granted the City a franchise, which permits the construction of the tie line. Subsequent to the issuance of the IUB's final order, however, one of the objectors filed a petition for judicial review of the order. On December 20, 2012, staff approved Change Order #9 for \$15,000 to cover the preparatory legal costs for that court case. **The outcome/ruling of this hearing could take as long as six months, but will not prevent Ames from continuing to construct the transmission line. The primary issue is over compensation to the landowner.**

The principal attorney who has been heading the City's legal team, Philip Stoffregen, has years of experience guiding franchise proposals successfully through the IUB process, and has been doing an outstanding job for the City. Given the estimated amount of staff time still needed to bring this work to conclusion, staff is requesting that Council approve Change Order #10 in the amount of \$40,000. That action will increase the overall purchase order amount to \$421,000.

While the legal support expense is high, it should be noted that BrownWinick has provided excellent legal services before the ALJ, the IUB, and now the Iowa Court of Appeals for nearly four years. The amount and level of legal services required has grown considerably since 2008. This investment in legal services continues to be crucial to our being able to provide reliable service to our electric customers in the future.

The adjusted 2012/13 CIP budget for the Vet Med Substation Voltage Support project contains \$88,426 of unobligated funding which can be used to cover this additional \$40,000 expense.

ALTERNATIVES:

1. Approve Change Order #10 to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the amount of the purchase order to \$421,000. The City will continue to be billed on an hourly basis 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 our electric customers to keep this interconnection project moving forward and to settle the remaining legal challenge raised by one objector. The firm of BrownWinick has provided excellent service to the Electric Utility throughout the current franchise process.

Therefore it is the recommendation of the City Manager that the City Council adopt Alternative #1, thereby approving Change Order #10 to the professional services agreement with BrownWinick of Des Moines, Iowa, in the amount of \$40,000, and increasing the total authorized amount to \$421,000.