

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. Since that time the BrownWinick law firm 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. The City paid \$421,553 to this firm for these services and that project purchase order was closed on November 27, 2013.

One unresolved issue required additional specialized legal services from BrownWinick. This final issue involves the determination of the amount of compensation that should be granted to a specific landowner for an easement. The City and the landowner met before the Compensation Commission and, from a city perspective, a fair value of \$14,900 for the easements was determined and paid to the landowner. On March 30, 2014, the Ames to Ankeny 161 kV transmission line was placed in service.

The landowner was not satisfied with the compensation amount awarded by the Compensation Commission and has filed suit in court for an amount of not-less-than \$300,000; hearing date is August 10, 2015. On March 13, 2014 a new Purchase Order in the amount of \$30,000 for legal services to prepare and defend the suit was authorized by the City Manager's office. Subsequently, Change Order #1, in an amount of \$18,000 was approved by the City Manager's Office for this legal work. It now appears an additional \$25,000 will be needed by the law firm to complete the task.

The FY 15/16 Electric Administration budget for outside professional services contains \$50,000 of unobligated funding which can be used to cover this additional \$25,000 expense.

ALTERNATIVES:

1. Approve Change Order #2 to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the amount authorized to pay for these legal services to \$73,000. 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:

The firm of BrownWinick has provided excellent service to the Electric Utility in the past franchise process. They are most familiar with the project and have the expertise on these types of court cases. Seeking other legal counsel at this point could seriously impair the City position and preparation for court.

Therefore it is the recommendation of the City Manager that City Council adopts Alternative No. 1, approving Change Order #2 to the professional services agreement with BrownWinick of Des Moines, Iowa, in the amount of \$25,000, and increasing the total authorized amount to \$73,000 to handle this land compensation issue.