

**COUNCIL ACTION FORM**

**SUBJECT: LEGAL SERVICES FOR EMINENT DOMAIN COMPENSATION FOR  
161KV TRANSMISSION LINE**

**BACKGROUND:**

This project was to construct a 161kV transmission line from Ames' Ames Plant substation to Mid-American Energy Company's (MEC) 161kV switching station northeast of Ankeny. This project was the final phase of a 5 phase project to increase electric delivery into the City to provide reliable electric service to the utility's customers under many different outage scenarios.

Due to landowner challenges surrounding the City's installation of this transmission line, a substantial amount of outside legal services were needed. In 2008 the City Council approved a retainer agreement for legal services with the BrownWinick law firm of Des Moines.

After eight years of work on the tie line project, a final decision was issued by the Iowa Utilities Board (IUB) on September 24, 2012. The IUB granted the City a franchise which permitted construction of the tie line. Subsequent to the issuance of the IUB's final order, however, two of the objectors filed a petition for judicial review of the IUB order. The District Court ruled that the City was not able to place the poles in the road right-of-way, leaving the City with the options of either negotiating a purchase of an easement, or obtaining the easement through eminent domain.

After unsuccessful negotiations with the two landowners, the City started eminent domain proceedings. This process culminated in a decision by the Polk County Compensation Commission in the City's favor in the amount of \$14,900 damages to be paid by the City to the landowners for the easement.

The two landowners then appealed the Compensation Commission award to District Court. A jury trial was held on August 10-12, 2015. The jury awarded the plaintiffs \$290,000 in damages (as compared to the \$14,900 in damages awarded by the County Compensation Commission). Per the statute, the City is also required to pay the plaintiffs' attorneys fees. City staff has directed outside counsel to initiate the process of appealing the District Court decision to the Iowa Court of Appeals. However, the City Council has not yet approved funding for the costs of the appeal.

On March 13, 2014 staff approved a Purchase Order in the amount of \$30,000 for legal services to prepare and defend the initial suit. There have been three additional Change

Orders since. Staff approved an initial change order for \$18,000; on July 14, 2015 City Council approved a second change order for \$25,000; and on December 2, 2015 staff approved a third change order for \$23,000.

**Outside legal counsel is now performing work to appeal the District Court judgment to the Iowa appeals court. Staff is requesting that the City Council approve Change Order #4 in an amount of \$50,000. That action will increase the overall authorized amount to \$146,000.**

While the legal support expense is high, it should be noted that for nearly four years BrownWinick has provided excellent legal services before an Administrative Law Judge, the Iowa Utilities Board, and now the Iowa Court of Appeals. The amount and level of legal services required has grown considerably since 2008.

The FY 2015/16 CIP budget for 69 kV Transmission Reconstruction includes \$349,610 of unobligated funding which can be used to cover this additional \$50,000 expense.

**ALTERNATIVES:**

1. Approve Change Order #4 in an amount of \$50,000 to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the amount of the purchase order to \$146,000. 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:**

Nearly \$275,000 is still at stake between the Compensation Commission's award and the jury's award. BrownWinick has provided excellent service to the Electric Utility throughout this process; and seeking other legal counsel at this point could seriously impair the results of this appeal.

Therefore, it is the recommendation of the City Manager that City Council adopt Alternative No. 1, thereby approving a change order to the professional services agreement with BrownWinick of Des Moines, Iowa, in the amount of \$50,000 and increasing the total authorized amount to \$146,000.