

COUNCIL ACTION FORM

**SUBJECT: CHANGE ORDER TO PROFESSIONAL LEGAL SERVICES PURCHASE
ORDER WITH BROWN WINICK ON 161kV TIE LINE FRANCHISE**

BACKGROUND:

The FY2011/12 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 its 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 an agreement for legal counsel with the BrownWinick law firm of Des Moines. At that time staff anticipated the cost of this contract 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 contract 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 of 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 for 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 Change Order # 1, increasing the amount of the purchase order to \$100,000.

As the franchise process continued, on March 23, 2010, City Council approved Change Order # 2, increasing the amount of the purchase order to \$150,000. Staff subsequently approved change order #3 in the amount of \$10,000. Council approved Change Order #4 on July 26, 2011 in the amount of \$85,000, and increased the purchase order amount to \$245,000, based on the best estimate that Brown Winnick could provide for services at that time.

There have been several unanticipated issues requiring additional legal services to address IUB, OCA and objector questions in pre-hearing briefs and testimony, leading up to the hearing. The hearing was a two-day hearing held on December 8 and 9 of 2011; this hearing was originally expected to last one day, but was extended due to lengthy questions and testimony given by objectors. Additional legal services beyond change order #4 have been required and staff has recently approved change order #5 in the amount of **\$47,000**.

With the hearing completed, there remains the additional tasks of post hearing briefs and reply briefs, which must be completed before the IUB issues its proposed decision in March of 2012 (the final decision expected to follow in late March, approximately two weeks after the proposed decision is rendered). Based on Brown Winnick's best estimate to conclude the post hearing and reply briefs, an additional Change order, #6 is proposed in the amount of **\$40,000** to cover legal fees through the issuance of a decision. This will bring the total amount of the purchase order to **\$332,000**.

While this expense seems very high, it should be noted that BrownWinick has provided excellent legal services and preparation of documents submitted to the IUB on behalf of the City for over 3 years now. The tie line is crucial to providing reliable services to our electric customers in the future, and IUB approval is required to construct the line. The budget for the Electric Utility has the funds to cover this expense.

ALTERNATIVES:

1. Approve a change order to the professional services agreement with BrownWinick of Des Moines, Iowa, in the amount of \$40,000, and increasing the amount of the purchase order to **\$332,000**. The City will continue to be billed on an hourly and services incurred basis 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 Brown Winick 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 Brown Winick of Des Moines, Iowa, in the amount of \$40,000, and increasing the total authorized purchase order amount to **\$332,000**.