Legislation Details (With Text)

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Title: Resolution to Approve Professional Services Agreement with Varnum LLP, for Legal Services Relative to MPSC Case No. U-18091 ($48,000.00) and to Appropriate Funds ($48,000.00) (8 Votes Required)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Varnum LLP contract.pdf

Date	Ver.	Action By	Action	Result
12/19/2016	1	City Council	Approved	

Resolution to Approve Professional Services Agreement with Varnum LLP, for Legal Services Relative to MPSC Case No. U-18091 ($48,000.00) and to Appropriate Funds ($48,000.00) **(8 Votes Required)**

By contracts entered into with The Detroit Edison Company (DTE) in 1984, the City became and is the owner and operator of two hydroelectric plants at Barton and Superior Dams, committed to sell all the net electrical output to DTE, and DTE committed to purchase all net electrical output. The generation of electricity started in 1986, and the contracts run for 50 years, until 2036.

Under the federal Public Utility Regulatory Policy Act (PURPA) both plants are Qualifying Facilities (QFs), defined as qualifying cogeneration facilities or qualifying small power production facilities, that have a right to sell to the electric utility of the City's choosing at a cost that does not exceed "the incremental cost to the electric utility of alternate electric energy." This is also referred to as a "must purchase" obligation on the part of the electric utility. As background, PURPA was enacted to further energy independence at a national level, and to try to solve the country's energy crisis.

In Michigan Public Services Commission (MPSC) Case No. U-18091, DTE has filed a proposal in which DTE seeks among other things a change in how its incremental cost is calculated for purpose of its purchases of electricity from QFs, and possibly to avoid its obligation to purchase electricity from QFs such as the City notwithstanding the requirements of PURPA. Although the City's contracts with DTE run until 2036, the City is concerned not only with what will happen after 2036, but also with possible impacts on DTE's exiting contractual obligations.

The City has made significant investments in the hydroelectric plants at both Barton and Superior Dams, starting with the $3.2 million in hydroelectric bond funds approved to be issued by the voters in early 1983, and continuing since then. Funding for improvements at Bardon Dam not exclusive to power production are split between the Water Supply Fund and the General Fund; improvements solely related to power production are funded entirely from the General Fund. Improvements at Superior Dam are funded entirely from the General Fund.

The City is planning a ten year rebuild of the Barton turbine in 2017 and will be planning a similar rebuild of the Superior plant within the next 5 years. The cost of these improvements is estimated to be about $400,000 each. In addition, the Federal Energy Regulatory Commission (FERC) has identified some safety improvements that are required at Barton dam, which will need to be implemented within the next five years. The investment associated with these improvements is anticipated to be approximately $2,000,0000. The City also plans to repair deteriorated concrete and replace protective coatings for the structural steel at both dams within the next five years, at an estimated cost of approximately $2,900,000.

The City relies on revenues from the City's two power purchase contracts with DTE to pay back the capital investments to the hydro facilities at both dams. Reduction of those payment amounts, or the possibility that DTE could avoid its purchase obligations, jeopardizes the financial viability of the hydro facilities. Revenues from DTE for power supplied from both hydro facilities is approximately $500,000.00 per year.

Because of the potential impact on the City if DTE were to prevail on its requests, and because of the need to act quickly to appear as a party in the MPSC case, the City Attorney selected Varnum LLP to act on the City's behalf to take that initial action. Varnum LLP was selected based on its qualifications and expertise in matters such as MPSC Case No. U-19081. The City needs to proceed with the filing of testimony, including expert witness testimony and to take other actions to counter DTE's requests in the case. A professional services contract with Varnum LLP is required and recommended to provide the legal services necessary in MPSC Case No. U-19081. Varnum LLP has estimated approximately $48,000.00 to cover its fees and costs to perform those services, which includes $5,000.00 to cover the fees of Peter Richardson, who will serve as expert witness on behalf of the City.

Fiscal/budget impact
Funds in the amount of $48,000.00 are available in General Fund Fund Balance, and need to be appropriated to the Water Treatment General Fund Hydro Power Operations and Maintenance Budget to fund this legal services agreement with Varnum LLP.

Varnum LLP complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances.

Approval of the professional services agreement with Varnum LLP in the amount of $48,000.00 for legal services relative to MPSC Case No. U-18091 is recommended.
Prepared by: Abigail Elias, Chief Assistant City Attorney
Reviewed by: Stephen K. Postema, City Attorney
Approved by: Howard S. Lazarus, City Administrator
Whereas, DTE Electric Company (formerly the Detroit Edison Company) (DTE), pursuant to a May 3, 2016, order of the Michigan Public Services Commission (MPSC) that directed DTE and other electric utilities to submit proposals for avoided cost methodologies and costs, filed a proposal in MPSC Case No. U-18091 in which DTE seeks among other things a change in how its incremental cost is calculated for purpose of its purchases of electricity from Qualified Facilities (QFs) such as the City of Ann Arbor's hydroelectric plants at both Barton and Superior Dams, and possibly to avoid its obligation to purchase electricity from QFs such as the City notwithstanding the requirements of the federal Public Utility Regulatory Policy Act (PURPA);

Whereas, After approval by the voters of a hydroelectric bond in 1983, the City entered into power

purchase agreements with The Detroit Edison Company in 1984 for both Barton and Superior Dams which last until 2036, and under which DTE committed to purchase power from both hydroelectric plants, then built hydroelectric plants at both Barton and Superior Dams which started generating hydro power in 1986;

Whereas, The City has relied on the income from both power purchase agreements to pay back annual operations and maintenance costs as well as the cost of capital improvements at both Barton and Superior Dams;

Whereas, The City's ability to continue its production of hydropower at Barton and Superior Dams is jeopardized without payment of an appropriate amount;

Whereas, DTE's proposals in MPSC Case No. U-18091 place at risk the City's ability to continue receiving appropriate payments from the hydropower it produces and now sells to DTE;

Whereas, It is appropriate and in the City's best interest to use the established process of intervention in the MPSC rate case (U-18091) as a means both to follow formally and to comment on a DTE proposal that has revenue and other implications for the City;

Whereas, The Varnum LLP, law firm is well qualified to provide legal services representing the City relative to MPSC Case No. U-18091;

Whereas, The firm has calculated an estimated amount of $48,000.00 for legal service fees and costs to bring the City into MPSC Case No. U-18091 as a party, and to represent the City's interests fully in MPSC Case No. U-18091, including fees for expert witness testimony; and

Whereas, Varnum LLP, complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances;

RESOLVED, That a contract for legal services with Varnum LLP, be approved in the amount of $48,000.00, including expert witness testimony, to provide legal services relative to MPSC Case No. U-18091;

RESOLVED, That $48,000.00 be appropriated from General Fund Fund Balance to the Water Treatment General Fund Hydro Power Operations and Maintenance Budget, to fund this agreement, and to be made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to execute the professional services agreement with Varnum LLP, subject to approval as to form by the City Attorney; and

RESOLVED, That the City Attorney and City Administrator be authorized to take the necessary administrative actions to implement this resolution.