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| ITEM #: | <u>19</u> |
| DATE: | <u>01-14-25</u> |
| DEPT: | <u>FLEET</u> |

COUNCIL ACTION FORM

**SUBJECT: CHANGE ORDER FOR OUTSIDE LEGAL SERVICES RELATED TO STEVEN
L. SCHAIKER PLAZA**

BACKGROUND:

The City, through outside contractors, is in the process of constructing the Steven L. Schainker Plaza across Clark Avenue from City Hall. The Plaza will ultimately contain a variety of multi-season amenities, including spray features, an ice-skating ribbon, a stage, restrooms, and gathering spaces.

Concrete was poured for the ice-skating ribbon in late 2023. Following curing, it became apparent that the concrete surfacing was unacceptable, which raised questions about whether the concrete was structurally sound and whether the subsurface refrigerant system would function properly. Due to these concerns, the City obtained outside legal services from Simmons Perrine Moyer Bergman PLC to assist City staff. This firm then obtained the services of a concrete expert to evaluate and provide information regarding possible solutions. The concrete expert's services are paid by the outside legal firm, which then passes the costs through to the City along with the costs for the legal services used.

Since retaining the outside legal firm, City staff has administratively approved change orders bringing the total amount of the billings to \$49,900. There is an outstanding bill that will bring the total over \$50,000, which is the threshold requiring City Council approval. **Given the unknown amount of additional legal and concrete expert services that will be needed, staff is recommending that the City Council approve a change order in the amount not to exceed \$50,000, to bring the total available to \$99,900.** This amount will only be used if services are provided.

At the November 26, 2024 City Council meeting, staff provided an update regarding the progress in resolving the outstanding concrete issues. This update stated that an elevation survey of the ice-skating ribbon surface and a ground penetrating radar survey would be completed to verify the depth of the wire mesh in the concrete, which would be critical to understand in order to evaluate if any proposed solutions from the general contractor, Henkel Construction, is feasible. The City has retained Terracon to perform the surveys and the cost of their services will be reimbursed by Henkel Construction. It is anticipated that City will have a report from Terracon by the end of January.

ALTERNATIVES:

1. Approve the change order to Simmons Perrine Moyer Bergman PLC, increasing the amount of the purchase order to \$99,900. The City will be billed only for services incurred.
2. Do not approve the proposed change order and ask staff for further information.

CITY MANAGER'S RECOMMENDED ACTION:

Due to the complexities of the ice-skating ribbon concrete and construction law, it is in the best interest of of the City to rely on outside legal counsel with experience in these matters. This purchase order also covers the costs of the outside concrete expert as well, which are billed to the law firm and passed through to the City. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, as described above.

It is also recommended that funding for these unbudgeted expenditures should come from the available balance in the Hotel/Motel Fund.