

March 16, 2010

Ref: 10025

## MEMORANDUM

TO: Finance and Personnel Committee

FROM: Mark Nicolini  
Budget and Management Director

SUBJECT: Street Light Pole Fund Transfer in CC File Number 091486

### **Purpose of Transfer**

The Finance and Personnel agenda for March 19 includes a Fund Transfer Request of \$402,300 from the Major Streets Program to the Street Lighting Program to fund replacement of corroded light poles. The poles suffer from corrosion at their base that can result in the poles falling over, presenting a public safety threat and exposing the City to liability. DPW estimates that the total replacement cost of the poles is \$752,300. Approximately \$380,000 in replacement costs has already been incurred. The Street Lighting capital program will fund \$350,000 of the expense and the fund transfer will allow the remainder of the expenses to be funded.

### **Background**

In December 2007, a high wind event resulted in failure of several steel street light poles at Cathedral Square and on the Wisconsin Avenue Viaduct. Failure was the result of corrosion at the base of the poles. The design of the poles allowed moisture and salt to accumulate behind collars at the base of the poles, resulting in accelerated deterioration. The problem was severe enough to require immediate removal of the poles from the Wisconsin Avenue Viaduct and replacement of all poles in the Cathedral Square area and E. North Ave. Bridge.

The defective poles are not the standard light poles used throughout the City. Rather, these are decorative, specialty poles used with one-time streetscaping projects. The corrosion problem was unexpected. DPW has changed the specifications for these specialty poles to eliminate the problem, including new pole design and mounting procedures.

DPW has been charging the pole replacement costs to a reimbursable account, expecting that the pole vendor would be required to reimburse the City for these expenses. However, the City Attorney has determined that the vendor is not liable and that expenses for pole replacement cannot be recovered from the vendor. The City must fund the replacement costs. A total of \$752,300 is needed to pay for expenses already incurred and to provide sufficient funding for projected additional expenses, with \$402,300 provided through a fund transfer.

Funding of \$350,000 is available in the Street Lighting capital program. The 2010 Street Lighting program included \$350,000 for conversion of lights in the 3rd Ward to LED lights. The City received a grant to

perform this work, so the city funding allocated for this project is available to pay a portion of the costs for replacing corroded street poles.

Additional funding is available in the Major Streets capital program to fund these costs. Projects that were scheduled for design or construction in 2009 and 2010 within the Major Streets Program will be funded through the ARRA program with federal stimulus funding. The City funding initially appropriated for these projects is available to pay for the cost of replacing the defective poles.

### **Expenditures to Date**

DPW is using City forces to conduct the replacement work. To date, DPW has spent or committed \$495,300. These expenses were for replacement of poles in imminent danger of falling. DPW estimates that another \$257,000 is required to complete the pole replacement. This will fund installation of poles on the Wisconsin Avenue Viaduct and replacing 78 additional poles. The total estimated replacement cost is \$752,300.

### **Legal issue on cost recovery**

The City hired an expert legal consultant to assist in determining if there was a legal basis for pursuing reimbursement from the vendor. The warranties on the poles had already expired, so there was no warranty basis for pursuing this reimbursement. The expert consultant determined that the poles were not defective, but that they were manufactured according to the City's specifications. Consequently, the City Attorney determined that the City does not have a legal basis on which to seek recovery from the vendor.

### **Consequences of not approving**

If the fund transfer is not approved, this does not eliminate the need to pay for the pole replacement expense. It requires funding this expense from an alternative source. Lacking any fund transfer, the Street Lighting capital budget would pay for an additional \$402,300 pole replacement expenses. This would reduce the funding available for street lighting projects approved in the 2010 budget.

The 2010 Street Lighting capital budget includes \$7 million in funding for:

- Paving related improvements: \$3,936,000
- Substation repair, maintenance, control circuit replacement: \$358,500
- Lighting repairs and upgrades: \$409,500
- Series circuit conversion: \$1,000,000
- Uncollectible pole knockdown repair: \$575,000
- Engineering: \$442,000
- Digitizing: \$279,000

Some of these projects would be reduced or eliminated in order to provide funding for the pole replacement.

### **Recommendation:**

Approve the transfer in the amount requested. It is desirable to allow the street segments that are affected by this problem to have street lighting. It also appears that based on the availability of federal funding, the use of available major street program funding will have a less negative impact on service levels than if DPW were to rely completely on funding from the street lighting program. The continuation of a specialized street lighting program is an appropriate policy issue for the Capital Improvements Committee to consider.