

**COUNCIL ACTION FORM**

**SUBJECT:** RITTS LAW GROUP -- CHANGE ORDER No. 14

**BACKGROUND:**

In September 2009 the Ames City Council approved an engagement and retainer agreement with the The Ritts Law Group, PLLC (Ritts) of Alexandria, Virginia (now Sanibel, Florida), for legal counsel and related consulting services necessary for the City's Steam Electric Plant and Combustion Turbine Station to comply with federal and state environmental laws and regulations.

For the initial agreement, Council authorized expenditure of an amount not to exceed \$100,000. During the initial twelve months, The Ritts Law Group worked closely with City staff to evaluate projects and their regulatory compliance implications scheduled for the Steam Electric Plant and the Combustion Turbine Station. In the ensuing years, Ritts provided counsel and support on numerous and varied environmental legal and regulatory compliance matters including:

- The City's request to the Iowa Department of Natural Resources (Iowa DNR) for a Prevention of Significant Deterioration (PSD) non-applicability determination.
- Engineering and legal analyses necessary to amend the Steam Electric Plant's air permits as required by the Iowa DNR.
- Legal and technical assistance to City staff in obtaining a determination that the City's Water Pollution Control Facility and the Steam Electric Plant do not comprise a single stationary source for air emissions.
- Legal counsel regarding the U.S. Court of Appeals decision regarding the Environmental Protection Agency's Cross-State Air Pollution Rule (CSAPR).
- Iowa DNR construction permit preparation work, specialized environmental legal support and extensive environmental analysis needed for the Steam Electric Plant's coal-to-natural gas conversion.

Since the initial engagement in 2009 with The Ritts Law Group, the City has expended a total of \$958,607.75 with this firm. The initial engagement purchase order and the subsequent change order history to date is summarized as follows:

Initial Purchase Order	September 8, 2009	\$100,000
Change Order No. 1	September 28, 2010	\$ 50,000
Change Order No. 2	March 1, 2011	\$ 50,000
Change Order No. 3	November 1, 2011	\$ 50,000
Change Order No. 4	February 14, 2012	\$ 50,000
Change Order No. 5	July 11, 2013	\$ 50,000
Change Order No. 6	August 26, 2014	\$100,000
Change Order No. 7	December 16, 2014	\$100,000
Change Order No. 8	April 14, 2015	\$100,000
Change Order No. 9	March 1, 2016	\$100,000
Change Order No. 10	December 20, 2016	\$100,000
Change Order No. 11	July 14, 2017	\$0
Change Order No. 12	May 29, 2018	\$15,000
Change Order No. 13	August 3, 2018	<u>\$100,000</u>
		\$965,000

Additional funding authorization is now needed for the City to continue to receive legal counsel and related consulting services regarding existing Clean Air Act and other existing and proposed regulations that currently or could affect the City's electric utility. This includes the following:

- A construction permit is needed for the Steam Electric Plant -- for the repair of the boiler tubes in Unit 8. The work required to obtain this construction permit is extensive due to the required analysis of "New Source Review" (NSR) and "Prevention of Significant Deterioration" (PSD) implications of federal and state regulations requiring the interpretation of a large amount of regulatory code, agency guidance documents, and court decisions.
- Once the boiler tube repair projects have been completed on Unit 7 and 8 boilers, the Title V Operating Permit for the Steam Electric Plant must be amended to reflect the effects of the construction permits upon the Title V Operating Permit.
- Work is needed to "reopen" the Title V Operating Permit for the Combustion Turbine Station (GT1 and GT2) in order to amend several conditions/requirements in the permit. In order to "reopen" the Title V Operating Permit to amend it, we first must prepare and submit an application for a construction permit with Iowa DNR.
- Legal counsel is needed pertaining to complying with the Coal Combustion Residuals (CCR) standard, which regulates coal ash materials in surface impoundments and

landfills. This legal counsel pertains primarily to the regulatory language, which is incredibly complicated, but also to actions taken by the courts and by Congress.

- Periodic interpretations of regulatory language and rules are needed pertaining to the definition and use of municipal solid waste (MSW) and refuse derived fuel (RDF) as fuel in the Power Plant.
- The Iowa Department of Natural Resources has recently informed the City that they need to determine whether or not the City's new Water Treatment Plant and the Steam Electric Plant should be considered as a single air emissions source. The City strongly believes that the two plants should not be considered a single emissions source and recent EPA guidance documents and determinations support that conclusion. However, an extensive legal argument needs to be made by the City to convince Iowa DNR of that conclusion.
- Advice and legal counsel is needed regarding environmental rules that impact the City's power generation facilities, as proposed and final rules regularly emerge from EPA and Iowa DNR.

**Therefore, Ames City Council authorization is requested to extend the engagement with The Ritts Law Group, PLLC for the change order amount of \$75,000. Funding is available in the approved FY 2020-21 Electric Services operating budget for outside legal services to cover this change order.**

#### **ALTERNATIVES:**

1. Approve contract Change Order No. 14 in the amount of \$75,000 to the The Ritts Law Group, PLLC of Sanibel, Florida, for specialized legal counsel and extensive environmental analyses necessary for compliance with U.S. EPA and Iowa DNR environmental laws and regulations.
2. Reject contract Change Order No. 14 and ask staff to solicit legal advice from another outside firm.

#### **CITY MANAGER'S RECOMMENDED ACTION:**

As the EPA and Iowa DNR continues to issue and enforce environmental rules, it is critical to the operation of the City's electric generation facilities that the City understands and complies with these rules. At the same time, if a rule appears to be unclear or its implementation could severely impact the utility operation, the City may wish to legally

challenge the federal or state regulation. This can only be accomplished with the assistance from highly specialized legal counsel.

Therefore, it is the recommendation of the City Manager that City Council adopt Alternative No. 1 as stated above.