

## COUNCIL ACTION FORM

**SUBJECT: CONTINUATION OF OUTSIDE CONSULTING SERVICES FOR WATER POLLUTION CONTROL PLANT NPDES PERMIT APPEAL**

### **BACKGROUND:**

In June 2010, the Water and Pollution Control Department entered into a consulting agreement with Hall and Associates of Washington, D.C. to provide regulatory and technical assistance related to the “draft” NPDES permit for the Water Pollution Control Facility.

After the permit was issued as “final” by the Iowa Department of Natural Resources (IDNR), the City Council authorized a continuation of the services by Hall and Associates to assist in preparing an administrative appeal of the terms of the permit. The original agreement authorized by staff was \$10,000, with a combined total of an additional \$60,000 subsequently authorized by Council through three separate actions. Through March 2011, a total of \$56,666.74 has been paid to Hall & Associates. Approximately half of the expense has been for the development of technical reports and documents to support the City’s concerns and to prepare possible routes for negotiated resolution. A quarter of the expense has been for performing detailed water quality modeling and reviewing the results with city staff and the IDNR, and the final quarter has been for review of documents specific to the Ames permit.

In March 2011, Hall & Associates accompanied staff to a meeting with representatives from the IDNR to discuss possible resolutions to the issues being appealed by the City. While there is still a considerable number of details yet to be resolved, the meeting concluded with a conceptual path that would lead to a mutually agreeable settlement to the appeal. Following that productive meeting, a request to postpone the hearing before the administrative law judge was made jointly by the City and the IDNR. A status conference with the administrative law judge is scheduled for June 23<sup>rd</sup>.

Continuation of the efforts under way will be necessary to protect the City’s interests in the NPDES permit appeal. The approach staff has taken with this professional services agreement has been to authorize work incrementally, so that Council could be kept informed on the progress and be aware of the expense in pursuing the appeal of the permit. As was noted during discussion of the previous extension to the agreement with Hall and Associates, a successful outcome for the City would minimize the capital expenses for unnecessary plant expansions, would provide the City a permit with which compliance can reasonably be assumed, and would still ensure that appropriate environmental protections to the South Skunk River are in place.

It is now recommended that an additional \$50,000 be authorized for ongoing assistance by Hall & Associates. It is important for Council to understand that the need for additional assistance beyond that amount will be dependent on the outcome of the settlement process and the need to continue through to an administrative hearing.

**ALTERNATIVES:**

1. Authorize continuation of outside consulting services with Hall & Associates in an additional amount not to exceed \$50,000 without prior authorization.
2. Authorize the continuation of outside consulting services at either a higher or lower additional amount.
3. Do not authorize the continuation of these outside consulting services at this time.

**MANAGER'S RECOMMENDED ACTION:**

The appeal of the NPDES permit includes a number of complex technical and regulatory issues that require specialized expertise by outside subject-matter experts. Because Hall & Associates has been closely involved in the permit appeal to date, continuation of its services is important to protect the City's interests.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving a continuation of the outside consulting services with Hall & Associates in an additional amount not to exceed \$50,000 without prior authorization.