

Memo

Legal Department



TO: Mayor Campbell and Members of the City Council

FROM: Doug Marek

DATE: October 28, 2011

SUBJECT: Legal Services for Clean Air Act Regulatory Compliance

In September 2009, the City Council approved an engagement and retainer agreement with Ritts Law Group of Alexandria, Virginia for legal services related to regulatory compliance issues under the Clean Air Act. 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 Electric Services and the Legal Department to evaluate the projects scheduled at the steam electric plant and the combustion turbines. The evaluation was necessary to determine the applicability of Clean Air Act regulatory requirements.

The Ritts Law Group provided legal and engineering assistance in support of a number of complex regulatory compliance matters facing the Electric Services, including the City's request for Prevention of Serious Deterioration (PSD) non-applicability determination from the Iowa Department of Natural Resources (IDNR). With the PSD issue still pending, Council in September, 2010 approved an extension of the engagement with Ritts Law Group for an additional amount not to exceed \$50,000. The Ritts Law Group then provided extensive engineering and legal analysis necessary to amend the air permits for the power plant as required by IDNR. The Ritts consultants also provided technical assistance to City staff in obtaining a determination that the waste water treatment facility and the power plant do not comprise a single stationary source for air emissions.

On March 1, 2011, Council approved another extension of the engagement with the Ritts Law Group for an additional amount not to exceed \$50,000. Additional engineering and legal support was required for analysis of a second single stationary source issue raised by IDNR related to the water treatment plant and the power plant. That determination is still pending.

Most recently, the Ritts Law Group has provided legal and engineering assistance to the City in connection with administrative and judicial appeals of the Environmental Protection Agency's Cross-State Air Pollution Rule (CSAPR). It is anticipated that the need for these specialized legal services will continue until the pending appeals and other regulatory issues are resolved. Since its engagement with Ritts Law Group in 2009, the City has expended a total of \$194,060. Additional funding will be required. I am therefore requesting authorization to extend the engagement with Ritts Law Group for an additional amount not to exceed \$50,000. Funding is available from the balance in the Electric Fund.

Cc: Donald Kom, Brian Trower, Duane Pitcher