



Memo

Legal Department

TO: Mayor Campbell and Members of the City Council

FROM: Doug Marek

DATE: February 10, 2012

SUBJECT: Additional Funding for Legal Services for Clean Air Act Regulatory Compliance

In September of 2009 the City Council approved the engagement and retainer agreement with Ritts Law Group of Alexandria, Virginia, for legal services related to Clean Air Act regulatory compliance. 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 projects scheduled at the steam electric plant and the combustion turbines.

Ritts Law Group provided legal and engineering assistance in support of a number of matters facing the Electric Services, including the City's request to the Iowa Department of Natural Resources (IDNR) for a Prevention of Serious Deterioration (PSD) non-applicability determination. In September, 2010, Council 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 engineering and legal analysis necessary to amend the air permits for the power plant as required by IDNR. Ritts 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.

In March, 2011, Council approved an 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. IDNR has not yet issued its determination on that issue.

Most recently, on November 1, 2011, Council approved an additional extension in an amount not to exceed \$50,000 so that Ritts Law Group could continue to provide legal and engineering assistance with administrative and judicial appeals of the Environmental Protection Agency's Cross-State Air Pollution Rule (CSAPR). As Council knows, in response to the City's appeal, the U.S. Court of Appeals has stayed the implementation of CSAPR until the Court can consider the merits of the case later this spring. Ritts will assist with additional Court briefs that are due next month.

Since its engagement with Ritts Law Group in 2009, the City has expended a total of \$249,179. Additional funding is required for the City to continue with the analysis and advice on CSAPR and a number of related regulatory issues. Services include the following: New Source Review (NSR) and Prevention of Significant Deterioration (PSD) analyses and determinations; acquisition of construction permits for projects necessary to maintain the assets and upgrade the equipment of the power plants, such as the Steam Electric Plant and the Combustion Turbines, in order to comply with federal and state environmental laws and regulations; assistance in the renewing of the Title V Air Permits necessary to operate the power plants; and formulating strategies for compliance with recently proposed or finalized EPA regulations, such as the Mercury and Air Toxics Standard (MATS) that was finalized by EPA on December 16, 2011.

I am 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