

COUNCIL ACTION FORM

SUBJECT: CHANGE ORDER #9 TO THE RITTS LAW GROUP AGREEMENT

BACKGROUND:

In September 2009, the City Council approved an engagement and retainer agreement with The Ritts Law Group, PLLC of Alexandria, Virginia, for legal services related to the regulatory compliance with the Clean Air Act.

For the initial agreement, Council authorized expenditure of an amount not exceed \$100,000. During the initial twelve months, Ritts worked closely with Electric Services and the Legal Department to evaluate projects scheduled at the steam electric plant and the combustion turbines. In the ensuing years Ritts has continued to provide assistance in support of a number of matters facing Electric Services, including the following:

- The City's request to the Iowa Department of Natural Resources (IDNR) for a Prevention of Serious Deterioration (PSD) non-applicability determination.
- Engineering and legal analyses necessary to amend the air permits for the power plant as required by the IDNR.
- Technical assistance to City staff in obtaining a determination that the wastewater treatment facility and the power plant do not comprise a single stationary source for air emissions.
- Support 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 power plant coal-to-natural gas conversion.

Since its engagement with The Ritts Law Group in 2009, the City has expended a total of \$635,557 with this firm. The initial engagement and the subsequent change order history is summarized below.

Initial Purchase Order	September 8, 2009	\$100,000
Change Order #1	September 28, 2010	\$ 50,000
Change Order #2	March 1, 2011	\$ 50,000
Change Order #3	November 1, 2011	\$ 50,000
Change Order #4	February 14, 2012	\$ 50,000
Change Order #5	July 11, 2013	\$ 50,000
Change Order #6	August 26, 2014	\$100,000

Change Order #7	December 16, 2014	\$100,000
Change Order #8	April 14, 2015	\$100,000

Additional funding is needed for the City to continue to receive analyses and legal advice from the Ritts Law Group regarding existing Clean Air Act issues and proposed regulations that currently affect the City's electric utility as well as other issues that are critical in planning and mapping out the future of the utility's energy producing resources.

Staff is now in the process of asking the Environmental Protection Agency for additional time to meet the Mercury and Air Toxics Standards Rule, evaluating and complying with the Clean Power Plan, challenging the CSAPR, renewal of our Title V permit, complying with the Coal Combustion Residual rule, and gaining a construction permit from the Iowa DNR to repair Combustion Turbine #1. All of these tasks will require legal guidance from the Ritts Law Group.

Council authorization is now requested to extend the engagement with Ritts Law Group for an additional amount not to exceed \$100,000. Funding in an amount of \$45,000 in FY 2015/16 and \$100,000 in FY 2016/17 will be available for this outside service from the Fuel and Purchased Power program in the Electric Services operating budget.

ALTERNATIVES:

1. Approve contract Change Order #9 in the amount of \$100,000 to Ritts Law Group for specialized environmental legal support, extensive environmental analysis, and Iowa DNR construction permit preparation work.
2. Reject contract Change Order #9.

MANAGER'S RECOMMENDED ACTION:

As the EPA continues to issue environmental rules, it is critical to the operation of the City electric generation that the City understands and follows 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 challenge the EPA in court. This can only be accomplished with specialized legal advice.

A construction permit from the IDNR is required in order to begin the repair of the combustion turbine. In filing a permit application with the IDNR, there is a requirement to submit supporting documents that include extensive environmental analysis. Submitting an incomplete or incorrect permit application would delay issuance of a construction permit and delay the repair of the peaking unit.

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