

COUNCIL ACTION FORM

SUBJECT: RITTS LAW GROUP AGREEMENT CHANGE ORDER #10

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 our Power Plant's regulatory compliance with the federal Clean Air Act. During the subsequent seven years Ritts has provided extensive legal services to help the City deal with the complexities of this law.

For the initial agreement, Council authorized expenditure of an amount not exceed \$100,000. During the initial twelve months, Ritts worked closely with staff to evaluate projects scheduled at the steam electric plant and the combustion turbines. In the ensuing years Ritts has provided assistance a number of other 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 Power Plant's air permits as required by the IDNR.
- Technical assistance to City staff in obtaining a determination that the Water Pollution Control 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's coal-to-natural gas conversion.

Since the initial engagement with the Ritts Law Group, the City has expended a total of \$732,070 with this firm. The initial engagement and the subsequent change order history is summarized on the next page.

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
Change Order #9	March 1, 2016	<u>\$100,000</u>
		\$750,000

Additional funding authorization is now needed for the City to continue to receive analyses and legal advice regarding existing Clean Air Act issues and proposed regulations that currently affect the City's electric utility, or are critical in planning and mapping out the future of the utility's energy production resources. This includes the following areas:

- Work is necessary to “reopen” the Title V Operating Permit for Power Plant Units No. 7 and 8 to amend the permit to reflect changes associated with converting the power plant from coal to natural gas. Application work is also needed to “renew” the Title V Operating Permit, with the objective to have it submitted to the Iowa DNR in the next 60-90 days.
- 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.
- Advice and legal guidance are needed pertaining to complying with the Coal Combustion Residuals (CCR) standard, which regulates coal ash materials in surface impoundments and landfills. This advice and legal guidance pertains primarily to the regulatory language, which is incredibly complicated, but also to actions taken by the courts and 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.
- Legal advice is needed for maintaining compliance with five construction permits, including the four permits for the conversion of the Power Plant from coal to natural gas, and the permit for the repair and replacement necessary to return GT1 back to service.

- Advice and legal guidance are needed regarding various regulatory topics impacting the City's power generation facilities, as proposed and final rules emerge from EPA and/or Iowa DNR.

Council authorization is now requested to extend the engagement with Ritts Law Group for an additional amount not to exceed \$100,000. Budgeted funding in an amount of \$61,000 is available in the approved FY16/17 Electric Services operating budget, and funding will be included in the City Manager's proposed FY17/18 budget to cover this change order.

ALTERNATIVES:

1. Approve contract Change Order #10 in the amount of \$100,000 to the Ritts Law Group for specialized environmental legal support, extensive environmental analysis and Iowa DNR construction permit preparation work.
2. Reject contract Change Order #10.

CITY MANAGER'S RECOMMENDED ACTION:

As the EPA 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 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, analyses and selective state and federal filings.

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