

**COUNCIL ACTION FORM**

**SUBJECT: RITTS LAW GROUP AGREEMENT CHANGE ORDER #13**

**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 nine 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 to exceed \$100,000. During the initial twelve months, Ritts worked closely with staff to evaluate projects scheduled at the Power 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 \$857,904.75 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	\$100,000
Change Order #10	December 20, 2016	\$100,000
Change Order #11	July 14, 2017	\$0
Change Order #12	May 29, 2018	<u>\$15,000</u>
		\$865,000

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:

- Two construction permits are needed for the Steam Electric Plant, one for the repair of the boiler (tubes) in Unit 7, and the second for the repair of the boiler (tubes) in Unit 8. The work required to obtain these construction permits is extensive and requires the interpretation of a large amount of regulatory code, agency guidance documents, and court decisions.
- Once the boiler tube work has been completed for both boilers, then the Title V Operating Permit for the Steam Electric Plant must be reopened and amended to reflect the effects of the construction permits upon the Title V Operating Permit.
- 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.
- The City is involved in a case at the United States Court of Appeals in the District of Columbia Circuit pertaining to the Cross State Air Pollution Rule (CSAPR), primarily regarding how EPA has imposed the National Ambient Air Quality Standard (NAAQS) limits upon the states.
- 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.
- The Iowa Department of Natural Resources has very recently informed the City that they are revisiting the decision as to whether or not the City's Water Treatment Plant and the Steam Electric Plant should be considered as a single air emissions source. The City strongly believes that the two plants should not be considered a single emissions source based upon the criteria that EPA has historically used.
- 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. Funding in an amount of \$100,000 is available in the approved FY2018/19 Electric Services operating budget for outside legal services to cover this change order.**

**ALTERNATIVES:**

1. Approve contract Change Order #13 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 #13 and ask the City Attorney to provide the required legal analysis of these electric issues.
3. Reject contract Change Order #13 and ask staff to solicit legal advice from another outside firm.

**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 the assistance from highly specialized legal counsel.

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