

# MEMORANDUM

TO: Financial, Expenditure and Legal Subcommittee

SUBJECT: District Legal Services

DATE: May 4, 2020

FROM: John Winkler, General Manager

The District currently has an agreement with Husch Blackwell, District Legal Counsel, which outlines the scope of services, terms of agreement for services, etc.

Per the attached letter from District Legal Counsel, Husch Blackwell proposes to renew the engagement and terms for legal services from June 30, 2020 to July 1, 2023. The District first entered into an agreement for legal services with Husch Blackwell in May of 2014 and due to exceptional performance, the Board of Directors extended the contract multiple times over the last six years.

It is proposed that the District enter into a new agreement for the provision of legal services with Husch Blackwell, as attached; for a period of three years beginning on July 1, 2020 to June 30, 2023.

**Therefore, Management recommends that the Subcommittee recommend to the Board of Directors, that the Board approve the proposed legal services agreement with Husch Blackwell, per the terms and conditions outlined in said agreement, for a period to begin upon execution of agreement from July 1, 2020 to June 30, 2023 subject to changes deemed necessary by the General Manger and approval as to form by District Legal Counsel.**

# HUSCH BLACKWELL

**Brent A. Meyer**  
Partner

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Omaha, NE 68154  
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March 17, 2020

## VIA E-MAIL

Mr. John Winkler  
General Manager  
Papio-Missouri River Natural Resources District  
8901 So. 154th Street  
Omaha, NE 68138

Re: Agreement for Legal Services

Dear Mr. Winkler and Directors:

Thank you for selecting Husch Blackwell LLP to provide legal services. This letter is to confirm our discussion about the engagement and to set forth the terms under which we will provide the requested services from June 30, 2020 to July 1, 2023.

**Client and Scope of Representation.** Our client for this engagement will be Papio-Missouri River Natural Resources District. It is understood that, in the absence of written agreement to the contrary, our work in connection with this engagement shall not be considered to create an attorney-client relationship between us and any other persons or entities related to Papio-Missouri River Natural Resources District, including parents, subsidiaries, shareholders, partners, members, or other affiliates, and thus our sole client for this engagement shall be Papio-Missouri River Natural Resources District. We will not consider entities affiliated with Papio-Missouri River Natural Resources District as our clients for the purpose of checking future conflicts of interest.

We are being retained to provide general legal services and representation to the Papio-Missouri River Natural Resources District, as directed by the Board of Directors acting through the General Manager. In the event that we are asked to provide additional services, we will confirm such engagement in writing. Absent specific modification, any additional services will be governed by the terms and conditions of this agreement.

**Conflicts.** As we have discussed, Husch Blackwell LLP has a number of offices and represents many clients on a regional or national basis. Some of the clients we represent may be your competitors, vendors or customers. It is possible that some of our present or future clients will ask us to represent them in disputes or other matters where their interests are adverse to

Papio-Missouri River Natural Resources District's during the time we are providing legal services to you. It is also possible that we will represent, or be asked to represent (in other matters), parties whose interests are adverse to yours in this or a future matter in which we represent you. Both of these situations would create a conflict of interest under our ethical rules which would prohibit us from undertaking the simultaneous representations without the waiver and consent of both clients. Therefore, as a condition to our undertaking this engagement, you agree that our firm may represent existing or new clients whose interests are adverse to yours in all types of matters, including litigation, that are not substantially related to the matters in which we represent you. You further agree that we may undertake to represent parties to whom you are adverse in matters in which we represent you, provided again that we do so only in matters that are not substantially related to our work for you. You could, of course, choose not to waive these conflicts of interest, in which case we could decline to undertake this representation of Papio-Missouri River Natural Resources District. Because the validity and enforceability of these conflict waivers are essential conditions to the firm's willingness to accept this engagement, and the firm would not accept the engagement but for these waivers, you agree that, if the validity or enforceability of these waivers is ever challenged or revoked, we may withdraw from representing you and continue to represent our other clients, even in matters directly adverse to Papio-Missouri River Natural Resources District, including litigation.

**Fees and Expenses.** Our fees are based on the amount of time we devote to a project. Any estimates of fees that we may give from time to time are based on our judgment of the circumstances at a given time, and actual fees may be more or less than the estimated amount. Any estimate of fees or costs we provide thus may not be considered as a minimum, maximum, or fixed fee quotation. The firm's fee schedule is available for review and the set fees for this three year extension are available for examination at the firm's Omaha office by an employee or Director of the District.

I will be the responsible attorney for this engagement and reporting to the District, but other attorneys and legal assistants may assist with the engagement. We ask that you agree that we may use such personnel as is appropriate in our professional judgment. Our hourly rates for attorneys range from \$365 to \$850 for partners of the firm and \$250 to \$510 for associates. The firm also employs paralegals and their rates range from \$140 to \$350. Other professionals employed in certain specialty areas have rates that range from \$180 to \$630. Our hourly rates are reviewed and adjusted periodically. Adjusted rates will be applicable to any work done after the effective date of the adjustment.

In litigation and matters requiring document productions, including third party and government subpoenas, investigations, and regulatory matters, electronically stored information is almost always implicated. For these matters, the firm uses the services of its Litigation Technology Department to meet the demands of electronic discovery and document management using the latest technological tools. The services provided by the firm's Litigation Technology Department require significant expertise. Services may include coordination and consultation on discovery materials, development and hosting of document review databases, and preparation and presentation of electronic evidentiary materials at trial. Pricing for this work is set forth in the attached schedule. Additionally, it is the firm's policy to bill for providing responses to audit letter requests. Should this type of work materialize, we charge a flat rate of \$250 to \$2,000

based on the complexity of the request and the time and resources expended by the members of the audit letter team. The flat fee covers all of the work of our centralized audit letter team to prepare the audit letter response. The flat fee does not include the time the attorneys handling your matter(s) spend preparing descriptions of actual or potential loss contingencies, which may be billed separately.

We will bill on a monthly basis for our professional fees and for reimbursement of expenses incurred in connection with this engagement. A schedule of our charges for various services and incidental items is attached. We will generally not pay the fees and expenses of other service providers, such as consultants, local counsel, deposition reporters, experts, and the like, but will forward those bills directly to you for payment.

Payment shall be due upon receipt of our invoice. If we do not receive comment about the invoice within twenty days of the date of the invoice, we will assume you have reviewed the invoice and find it acceptable. Invoices not paid within thirty days of the invoice date will be subject to a late charge of 1% per month on the unpaid balance, commencing from the date of the invoice and continuing until paid. If an invoice remains unpaid more than ninety days after the invoice date, we may, consistent with our ethical obligations and judicial requirements, cease performing services for you until arrangements satisfactory to us have been made for payment of arrearages and future fees. You agree that, in such an event, we have the right to withdraw as your attorneys from any matter or proceeding in which we may be engaged.

**Deposit.** It is our standard practice to require an advance deposit from a new client and for each new significant matter. In connection with this engagement, we request a deposit of \$0 to be kept in a trust account. You have agreed to pay our monthly invoices on a current basis, and the deposit shall be applied to the outstanding balance upon the conclusion of our representation or, at our option, to satisfy delinquent monthly statements. We reserve the right to request further reasonable deposits if the initial payment is used to satisfy prior invoices. Any unused portion of the deposit will be refunded at the conclusion of the representation.

**Communications.** We understand that we are to report to and take direction from John Winkler for this engagement. If you should prefer that we report to some other person, please let us know. We understand that you have approved the use of internet e-mail for communications concerning this matter. Our state ethics rules suggest that we remind you that the internet does not provide a totally secure method of communication, and e-mail may be copied and held by any computer through which it passes. Persons not participating in the communication may intercept e-mails, and e-mails stored on computers may be accessed by unauthorized parties. If you would prefer that we not communicate with you via e-mail, please advise me immediately.

**Marketing Materials.** Periodically, our firm prepares marketing materials in which we include the names and corporate logos of selected clients and sometimes a brief description of a significant project on which we worked. You agree that we may do so with regard to you and any matters we handle for you at this time or in the future. If we include our representation of you in these materials, we will not include information about any specific transaction that is not otherwise publicly available without your prior approval.

**Document Retention.** Some materials related to our representation of you (e.g. administrative records, time and expense reports, personnel materials, and credit and accounting records) belong to us and will be handled in accordance with our document retention policy. Other materials (i.e. documents provided to us by you and the final version of documents that you retain us to create) are considered client files and belong to you. We will retain your client file for ten years or such longer period as required by statute or our firm's document retention policy. At your request, we will return your file to you or any other person designated by you. If, at your request, we retain your client files beyond their normal period of retention, such long-term storage will be at your cost. If you have not requested that we return your file or made arrangements for long-term storage, we may destroy or otherwise dispose of your client files after the retention period.

**Limited Liability Partnership.** Husch Blackwell LLP is organized as a limited liability partnership under Delaware law. This means every attorney in our firm who either directly performs or supervises legal services for you will have full professional responsibility and legal liability for those services, in addition to the firm itself. However, individual attorneys in the firm who have no direct involvement or supervisory role in your representation will not have any personal liability for the legal services performed by others in the firm.

**Conclusion of Representation.** Our relationship with you will be concluded when we have completed our agreed-upon services. In addition, and without limiting the preceding sentence, in the event we have performed no work for you or on your behalf for six consecutive months, you agree that our attorney-client relationship with you will be terminated.

It is understood that the terms of this letter and its enclosures constitute the terms under which we will undertake this representation. If you find the proposed engagement terms acceptable, please execute and return a copy of this letter for our file. If you do not agree to any of the terms of this letter and its enclosures, please call me as soon as possible within the next ten days to discuss. If I do not hear from you, it is understood that these are the terms of our representation.

Thank you again for selecting us for this engagement. We look forward to working with you.

Very truly yours,

HUSCH BLACKWELL LLP

By: \_\_\_\_\_

Brent A. Meyer  
Partner

AJR

HB EGL v2020.01.10

Attachment

AGREED:

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By: \_\_\_\_\_  
Name: John Winkler  
Title: General Manager  
Dated: \_\_\_\_\_

**SCHEDULE OF CHARGES FOR INCIDENTAL SERVICES**  
**Effective 1/1/2020**

This schedule identifies charges that will be added to our invoices for incidental services we provide and costs we incur in connection with our legal services. If we have reached a separate written agreement with you concerning any of these charges, the terms of that separate agreement will prevail over any conflicting provisions of this schedule.

**Document Processing Services**

Paper (Black and White)	\$0.15 per page
Paper (Color)	\$0.25 per page
	No charges for paper documents under 20 pages

**Computer Legal Research Costs**

Online research may be charged at up to 95% of the vendor's transactional/retail rates, when applicable	Charged at up to 95% of the vendor's transactional/retail rates
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**Postage, Couriers and Delivery Services**

Large mailings, certified or express delivery services are billed to client at actual costs	Billed at actual costs
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**Internal Messengers Services**

In-House Messengers charges are billed at \$60 per hour, in 6 minute increments	\$60 per hour, in 6 minute increments
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**Video Conferencing**

Husch Blackwell initiated; 2 locations	\$100 per hour/per location: prorated based on actual minutes used
Husch Blackwell initiated; each additional location	\$100 per hour/per location: prorated based on actual minutes used
Non Husch Blackwell initiated; each additional location	No Charge

**Paper file storage following conclusion of engagement**

Client material is boxed and stored at a secured offsite location	\$0.17 per bankers box per month
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**Electronic file storage following conclusion of engagement**

If after the engagement data is required to remain active and or accessible via HB data storage, a fee of \$50.00 per gigabyte per year will be billed to the client. This fee is pro-rated by size and specified time frame.	\$50 per gigabyte per year (prorated)
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**Media Services-**

CD/DVD creation\duplication:	\$10 CD / \$20 DVD
Flash Drive 8 Gigabyte:	\$20 per Drive
Flash Drive 32 Gigabyte:	\$35 per Drive
External hard drive 1 Terabyte	\$80 per Drive

**Audit Letters**

\$250 - \$2,000

**SCHEDULE OF CHARGES  
FOR  
LITIGATION TECHNOLOGY SERVICES  
Effective March 1, 2019**

**(Rates subject to periodic adjustment.  
Adjusted rates apply to services provided subsequently.)**

This schedule identifies charges that will be incurred and appear on your invoice when Litigation Technology is engaged to provided services on your matter.

Litigation Technology charges for its services via a monthly fee.

**Flat Fee**

<b>0 to 5 GB</b>	<b>\$400.00 per month</b>
<b>5.01 to 10 GB</b>	<b>\$800.00 per month</b>
<b>For each additional GB</b>	
<b>10.01 to 100 GB</b>	<b>\$35.00 per GB\Month</b>
<b>100.01 to 200 GB</b>	<b>\$25.00 per GB\Month</b>
<b>200.01 and up</b>	<b>\$10.00 per GB\Month</b>

**SERVICES INCLUDED IN FLAT FEE**

The above listed pricing includes all of the following services when electronic data is processed for inclusion into a Relativity database (our document review and production software):

- Up to 100 compressed GB of data processing using Nuix early case assessment software
- Loading of data and updates to Relativity document review database
- Hosting of internal Relativity document review database
- Electronic document productions
- OCR processing
- Electronic bates numbering
- Format conversions
- Media services
- Hourly time by Litigation Technology professionals

**HOW THE MONTHLY FEE IS CALCULATED**

Monthly fee pricing is based on a flat rate of \$400.00 per month for matters under 5 GB and at the rate of \$800.00 per month for matters between 5.01 and 10 GB.

For matters over 10 GB, pricing is based on a graduated scale.

For example: A matter with 12 GB would be billed at a rate of \$800.00 for the first 10 GB of data and then \$35.00 per GB for the additional 2 GB, for a total of \$870.00 per month. The monthly fee will be billed on the 1st of every month as long as the database resided in the HB Relativity system at any time during the prior month. Fees are billed on a monthly basis and are not prorated.



## **SERVICES NOT INCLUDED IN FLAT FEE**

Fees not included in the monthly fee pricing are as follows. Please note that these services are not necessarily required in every matter:

Electronic discovery data processing using Nuix early case assessment software for data sizes over 100 compressed GB or data processing for early case assessment as an ad hoc service (i.e., processing/early case assessment not intended for a Relativity database):

\$90.00 per compressed GB

Relativity outside user access: \$90.00 per user per month

Collection of source data: Hourly rates will apply.

Trial Support Services: Hourly rates and equipment rental fees will apply.

## **GLOSSARY OF TERMS**

**Electronic discovery data processing and/or Early Case Assessment in Nuix:** ECA processing is a necessary step to cull data prior to loading into Relativity for document review. De duplication and search terms can be applied. Documents can be tagged for import into Relativity. This includes setup, processing time and quality control.

**Relativity outside user access:** For any non HB personnel needing access to a Relativity database.

**Loading and update to document review database:** This includes standard manipulation of load files including modifying directory paths within the load file. It includes copy time to the network, any definition of fields in the database, the actual load into the database and quality control.

**Electronic Document Productions:** An electronic document production is the electronic version of producing documents in paper format. This includes setup time in the database, bates numbering, computer processing time, accompanying load files and quality control.

**OCR Processing:** Optical character recognition is the text extraction or rendering of a document image to text format. OCR allows for scanned documents or image based electronic documents to be searched through common review databases. This includes setup, processing time and quality control.

**Electronic Bates Numbering:** Electronic bates labeling is the electronic marking of bates numbers, prefix, and other designations on various electronic file types. This fee includes setup, computer processing time and quality control.

**Format Conversion (Example TIF to PDF):** This includes setup, processing time and quality control.

### **Media Services:**

CD/DVD creation\duplication

Flash Drive 8 Gigabyte

Flash Drive 32 Gigabyte  
External hard drive 1 Terabyte

### **CIRCUMSTANCES REQUIRING OUTSOURCING**

Occasionally, we may outsource our services based on deadlines and resources available. The actual vendor cost for outsourced services will be passed directly to you, with no cost increase or markup.

Additionally, when providing eDiscovery expertise and Litigation Technology services on your matter, the firm's eDiscovery team (Husch Blackwell eDiscovery Solutions (HBES)) may engage its preferred vendor at its discretion to assist with Relativity Analytics consulting, if needed to benefit your case. The cost associated with this work will be included on your invoice from Husch Blackwell. HBES may also engage a combination of in house, as well as outsourced document review attorneys from its preferred vendor, at its discretion on your matter, based on what best serves the needs of the case and budget. The cost associated with outsourced document review will be included on your invoice from Husch Blackwell.

### **SCHEDULE OF CHARGES FOR TRIAL SUPPORT SERVICES**

#### **Offsite presentation and hardware equipment rental**

- No charge for equipment rental beyond 10 days of consecutive usage.
- Daily rental fees apply once equipment is onsite and ready for use.
- Daily rental fees are not billed for equipment preparation, shipping time or days not in use.
- Timekeeper hourly rates apply for preparation, setup, operation, and teardown.
- One toner cartridge is supplied at no cost for printer rental; sequential cartridges are billed to the client with no markup incurred.

#### **Printers**

HP M15w B&W LaserJet Pro Printer	\$10.00 per day
Canon iP90 Color Inkjet Printer	\$20.00 per day
Ricoh SP4210N B&W LaserJet Printer	\$100.00 per day
HP 2025 Color LaserJet Printer	\$60.00 per day

#### **Projectors**

Hitachi 4500 Lumen LCD Projector	\$120.00 per day
Canon 6500 Lumen Large Venue LCD Projector	\$180.00 per day
Epson 4500 Lumen LCD Projector	\$130.00 per day

#### **Projection Screens**

Da-Lite 7.5'x10' Screen	\$45.00 per day
Da-Lite 5'x 8' Screen	\$30.00 per day

#### **Document Cameras**

ELMO HV-5100XG	\$60.00 per day
WolfVision VZ8-Plus	\$60.00 per day