

Agenda Item: 8.

MEMORANDUM

TO: Financial, Expenditure and Legal Subcommittee

SUBJECT: Retainer Agreement for District Legal Services

DATE: December 1, 2011

FROM: John Winkler, General Manager

The District currently does not have a retainer agreement with District Legal Counsel Paul Peters which outlines scope of services, term of agreement for services etc. It has been suggested in the past that it may be prudent for the District to have such agreement in place.

I consulted with several other Natural Resource Districts, including the Lower Platte South and the Lower Platte North NRDs, to determine if they in fact had retainer agreements with their District legal counsel and I reviewed their agreements with Mr. Peters and solicited his input on the drafting of a similar agreement for the Papio NRD.

It is proposed that the Papio NRD enter into a retainer agreement with Mr. Peters to provide legal services in accordance with the terms and conditions outlined in the attached retainer agreement. It is proposed that Mr. Peters receive a retainer of \$365.00 per month and bill the District \$175.00 per hour for all legal services and matters not covered within the scope of the retainer. It is proposed that the term of the agreement shall be a period of three (3) years, commencing on January 1, 2012.

Management recommends that the Subcommittee recommend to the Board of Directors that the Board approve the proposed retainer agreement with Paul Peters per the terms and conditions outlined in said agreement for a period of three (3) years beginning on January 1, 2012.

ATTORNEY RETAINER AGREEMENT
PAPIO MISSOURI RIVER NATURAL RESOURCES DISTRICT
PAUL F. PETERS, P.C., L.L.O.

PAUL F. PETERS, d/b/a PAUL F. PETERS, P.C., L.L.O., 640 Omaha Tower, Omaha, Nebraska 68124, hereinafter referred to as "**Attorney**," agrees to provide legal services to the PAPIO MISSOURI RIVER NATURAL RESOURCES DISTRICT, hereinafter referred to as "**Client**," upon the following terms and conditions, to-wit:

1. **Retainer.** Client agrees to pay Attorney \$4,380.00 per year as a retainer, payable monthly at the rate of \$365.00 per month commencing with the month of _____ 2011. No written or separate statement from Attorney to Client will be required for the payment of this monthly amount to become due.

2. **Scope of Services Under Retainer.** The legal services provided under the retainer shall consist of Attorney's attendance at the regularly-scheduled monthly meetings of Client's Board of Directors, and attendance at the regularly-scheduled monthly meetings of subcommittees of Client's Board of Directors, when the same are held at Client's principal offices at 8901 S. 154th St., Omaha, NE 68138-3621. The General Manager of Client may excuse Attorney from attendance at any such meeting(s) when Attorney is engaged in trials or appeals or the preparation therefor, during illness, or for other good reason.

3. **Charges for Services Not Included Within Retainer.** Additional professional legal services will be provided by Attorney as directed or requested by the Chairperson of Client's Board of Directors or Client's General Manager. Attorney and Client agree that such additional legal services will be provided at the following rates:

a. \$175.00 per hour for all legal services and matters other than those within the scope of services covered by the above retainer; and,

b. Per hour rates as provided in the previous subparagraph for legal services provided by attorneys employed by or associated with Attorney and approved by Client's General Manager.

Client agrees to reimburse Attorney for actual costs incurred by Attorney including but not limited to fees fixed by law or assessed by public agencies, long distance telephone calls and extraordinary postage (except for long distance telephone calls and postage for services included within Scope of Services), parking and other travel expenses, mileage, if travel is by Attorney's auto, at the reimbursement rate established from time to time by the Internal Revenue Service, and the costs of photocopying and other reproductions required by Attorney from commercial copying companies.

4. **Term.** The term of this Agreement shall commence as of the first day of _____, 2011, and shall terminate as of the first day of _____, 20 ____, when this Retainer Agreement will be reviewed by both Attorney and Client.

5. **Representation.** Attorney will not represent any person having an interest adverse to the interests of Client.

6. **Consultants, Investigators and Experts.** To aid in the preparation or presentation of legal matters for Client, Attorney may hire consultants, investigators or experts, but not without prior approval of Client's General Manager and the agreement to pay or reimburse Attorney for the payment of their fees and charges. Attorney will select and hire said consultants, investigators and experts.

7. **Billing Statements.** Unless excused by Client's General Manager for good cause, Attorney will submit to Client monthly statements for fees and costs incurred pursuant to this Agreement. Said statements will be paid by Client pursuant to its normal claim-handling policy.

8. **Discharge and Withdrawal.** Client may discharge Attorney at any time. Attorney may withdraw from representation of Client at any time for good cause, which could include Client's breach of this Agreement, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, or any fact or circumstance that in Attorney's determination would render his continuing representation unlawful, unethical or infeasible. When Attorney's services conclude, all unpaid charges will immediately become due and payable. Attorney will, upon Client's request, deliver all original documents in Attorney's litigation files to Client, along with any funds or property of Client in Attorney's possession.

9. **Disclaimer of Guarantee.** Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee as to the outcome of any matter and are only expressions of opinion.

10. **Construction.** This Agreement shall be construed under the laws of the State of Nebraska.

Dated as of this ____ day of _____, 2011.

PAUL F. PETERS, PC, LLO

By _____
President

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager