

**WEST DES MOINES WATER WORKS  
BOARD OF TRUSTEES MEETING COMMUNICATION**

**DATE:** November 6, 2017

**ITEM:**

- 3. Recommendation from Committee
  - c. Regionalization
    - 2. Motion – Authorizing Legal Services from Brick Gentry P.C. for Regional Water Works Authority Matters

**FINANCIAL IMPACT:**

Not-to-exceed cost of \$24,750. West Des Moines Water Works would be responsible for one-third (1/3) of the cost, \$8,250.

**SUMMARY:**

Paul Drey of Brick Gentry, P.C. was selected by Board Chairs from West Des Moines Water Works, Urbandale Water Utility and Des Moines Water Works to assist in legal matters regarding the formation of a regional water production utility. Mr. Drey was recommended by numerous metro leaders as he is experienced in regional agreements, including most recently the Des Moines Area Regional Transit (DART) authority.

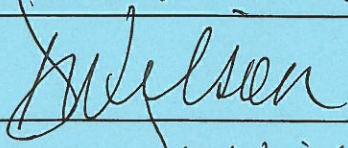
The details surrounding this issue were reviewed and approved by the Regionalization Committee.

**BACKGROUND:**

West Des Moines Water Works, Urbandale Water Utility and Des Moines Water Works are leading an effort to facilitate discussions on a potential regional water production utility. It is necessary to obtain legal services to develop and draft a final 28E/28F document, identify local, state and federal issues and assist in preparing necessary legal documents. The Board of Trustees of the Urbandale Water Utility and Des Moines Water Works will consider engagement of Mr. Drey at their upcoming meetings.

**RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:**

To concur with the recommendation of the Regionalization Committee and authorize legal services from Brick Gentry P.C. for Regional Water Works authority matters.

Prepared by: 

Approved for Content by: 



October 30, 2017

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Urbandale Water Utility  
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Re: Regional Water Works Authority Matters

Dear Susan, John and Karen:

Thank you so much again for contacting me and Brick Gentry P.C. with regard to your inquiry concerning the formation of a regional water works authority ("Water Authority"). From my experience in representing various other regional governmental entities, there are several possible legal issues which will need to be addressed at the local, state, and even federal levels. In my brief conversation with you, I believe that you have a very good understanding of many of these issues. I am hopeful that the information that I am providing to you will supplement your understanding and provide you greater insight into the issues, particularly related to the formation and, to some extent, the operation of the Water Authority, which you will need to address from a legal perspective.

In regard to legal services, you have specifically requested our legal services to work with your consultant to develop and draft the final 28E/28F or 28M documents and to provide legal research on certain matters related to this request. The Water Authority will need to determine its governance structure, which structure will need to be included in the formation documents, and then possibly included in its By-Laws. Legal counsel, in conjunction with the other consultant of the Water Authority, will need to provide assistance in identifying the issues and concerns relating to the structure of this governing body and then provide the final governance documents as its deliverable.

Specifically, you have asked for my thoughts concerning the costs for such legal services. Answering your inquiry is difficult as there are many factors, which may impact the time needed to complete these legal services. Based on my understanding of the project to date, I propose that the hourly rate charged by our firm be set at \$150.00 per hour. On occasion, a client may hire our firm for a specific project, and the client negotiates a certain fee for that project. This arrangement allows the client to budget appropriately for the fee. After reviewing this project and the expected hours necessary to complete it, I would propose for your planning purpose that the fee for this project be capped at \$24,750.00. If I expect the hourly fees to significantly exceed this amount, then I would contact you and we could reassess; however, I do not anticipate this to occur.



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The following provisions of legal representation would apply to this relationship:

1. Fees for services rendered will be based on the reasonable value of those services as determined in accordance with the American Bar Association and Iowa Rules of Professional Conduct. Such fees will be based primarily on our hourly billing rates. Billing rates differ, depending generally on the attorney's experience and years of practice, and the firm adjusts these rates from time to time. You will receive a written notice of the changes in these rates when they occur. The time for which a client will be charged will include, but will not be limited to, telephone and office conferences with a client and counsel and other third parties; conferences among our legal personnel; legal research; responding to clients' requests for us to provide information in connection with the projects; drafting of letters, contracts and other documents; travel time; and time in meetings, description of strategy or planning for this projects. Time is billed in tenths of an hour with a minimum charge of two tenths. In an effort to reduce legal fees, we use paralegal personnel and student law clerks, when appropriate. Time devoted by paralegals and law clerks to client matters is charged at hourly billing rates, which also are subject to adjustment from time to time by the firm. Law clerk and paralegal billings are specifically listed on our statements. Other factors may be taken into consideration in determining our final fees, including the responsibility assumed, the novelty and difficulty of the legal problem involved, the benefit resulting to the client, the risks involved, and any unforeseen circumstances arising in the course of our representation.

2. In addition to our fees, we will be entitled to payment or reimbursement for costs and expenses incurred in performing services such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals and ground transportation), long-distance telephone, word processing, court costs and filing fees. Certain of such items may be charged at more than our direct cost to cover our overhead. Unless special arrangements are made at the outset, fees and expenses of others will not be paid by us and will be the responsibility of, and billed directly to, the client.

3. Upon execution of this Agreement, Client agrees to or has delivered to Attorney an initial retainer of **\$0.00**. Any retainer funds will be held in the Brick Gentry PC Trust Account, a trust account established pursuant to the Interest on Lawyer Trust Account program established by the Iowa Supreme Court, until earned. The Attorney's trust account is interest bearing and interest on this account is remitted to the Lawyer Trust Account Commission, State Capitol, Des Moines, Iowa 50319, as required by law. Client acknowledges that Brick Gentry P.C. has an Iowa Code §602.10116 (2012) attorney lien on any funds that have been placed into the Brick Gentry PC Trust account for fees and expenses due under this agreement, and otherwise as provided by law.

4. Fees and expenses will be invoiced monthly and are payable upon presentation. We expect prompt payment and reserve the right to postpone or defer providing additional services or to discontinue our representation if invoiced amounts are not paid when due. By executing this agreement, you authorize us to draw client funds from the Brick Gentry PC Trust Account that are necessary to pay any fees or costs that remain due on the seventh day past the postmark date of each monthly invoice.

5. Although we may from time to time for a client's convenience furnish estimates of fees or costs that we anticipate will be incurred, these estimates are subject to unforeseen circumstances and are by their nature inexact.

6. A client shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services rendered and costs or expenses paid or incurred on behalf of the client prior to the date of such





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termination. Upon termination of our services or representation, you authorize us to immediately draw client funds from the Brick Gentry P.C. Trust Account that are necessary to pay for all services rendered and costs or expenses paid or incurred on behalf of the client prior to the date of such termination and any client funds remaining in the Brick Gentry P.C. Trust Account after payment of said fees and expenses, shall be promptly returned to Client.

7. We reserve the right to withdraw from our representation if, among other things, the client, or other persons responsible for these terms, fails to honor the terms of the engagement letter, the client fails to cooperate or follow our advice on a material matter, or any fact or circumstance that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, the client will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and costs and expenses paid or incurred on behalf of the client to the date of withdrawal, pursuant to the terms of this agreement.

8. If any claim or action is brought against us or any personnel of the firm, and such claim arises from the client's negligence or misconduct, the client, or other persons responsible for these terms, will hold us harmless and indemnify us for all damages incurred.

Please note that even upon execution of this agreement, the attorney-client privilege does not automatically attach to every communication between this firm and the client. For example, sending or receiving emails using a computer, other device or email account where there is significant risk that a third party may gain access can waive the attorney-client privilege. In addition, clients should avoid using a workplace device or system for attorney-client communications, especially sensitive or substantive communications, as even ministerial communications involving legal matter sent on such systems could result in a waiver of the attorney-client privilege.

We are pleased to have this opportunity to represent you, and look forward to working with you. If the foregoing accurately reflects your understanding, and you agree to the terms and conditions of our representation, please indicate your acceptance by executing the acceptance provided on the page following, and return this document to our office.

Very truly yours,

A handwritten signature in black ink that reads "Paul A. Drey". The signature is written in a cursive, flowing style.

Paul A. Drey

PAD:pm



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ACCEPTANCE OF ENGAGEMENT TERMS

I, Susan J. Huppert, on behalf of Des Moines Water Works, have read the foregoing engagement letter and general provisions of legal representation, and hereby agree to be jointly and severally bound by all terms outlined. By signing this acceptance letter, I hereby agree to the terms of legal representation outlined in this engagement letter on this the \_\_\_\_ day of \_\_\_\_\_, 2017.

DES MOINES WATER WORKS

\_\_\_\_\_  
By: Susan J. Huppert  
Its: Chair, Board of Directors

ACCEPTANCE OF ENGAGEMENT TERMS

I, John McCune, on behalf of Urbandale Water Utility, have read the foregoing engagement letter and general provisions of legal representation, and hereby agree to be jointly and severally bound by all terms outlined. By signing this acceptance letter, I hereby agree to the terms of legal representation outlined in this engagement letter on this the \_\_\_\_ day of \_\_\_\_\_, 2017.

URBANDALE WATER UTILITY

\_\_\_\_\_  
By: John McCune  
Its: Chairman, Board of Directors

ACCEPTANCE OF ENGAGEMENT TERMS

I, Karen Novak Swalwell, on behalf of West Des Moines Water Works, have read the foregoing engagement letter and general provisions of legal representation, and hereby agree to be jointly and severally bound by all terms outlined. By signing this acceptance letter, I hereby agree to the terms of legal representation outlined in this engagement letter on this the \_\_\_\_ day of \_\_\_\_\_, 2017.

WEST DES MOINES WATER WORKS

\_\_\_\_\_  
By: Karen Novak Swalwell  
Its: Chair, Board of Directors