



MT. DIABLO UNIFIED SCHOOL DISTRICT
JAMES W. DENT EDUCATION CENTER
1936 Carlotta Drive
Concord, California 94519-1397
(925) 682-8000

OFFICE OF
GENERAL COUNSEL

August 10, 2011

Peter K. Fagen
Managing Partner
Fagen Friedman & Fulfrost, LLP
6300 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90048

Dear Mr. Fagen:

This letter confirms your engagement as outside counsel for the Mt. Diablo Unified School District ("District"). The terms and conditions of this engagement shall supersede all previous agreements between your firm and the District. Enclosed please find a copy of the District's Professional Services Agreement for General Legal Services and Case Management and Billing Standards which form the engagement agreement. Please confirm your firm's acceptance by signing and returning the District's Legal Service Agreement. Two originals are enclosed for your convenience. Please sign one of the originals and return to me in the self-addressed, stamped envelope and keep one original for your records.

The scope of this engagement is to provide representation for the District from July 1, 2011 through June 30, 2014. The scope of representation may be adjusted or modified by the Office of the General Counsel as necessary during the course of this engagement. You have confirmed that no conflict of interest appears in your or your firm's representation of the District in this matter. Of course, as specified in the legal service agreement, if a conflict arises contact this office immediately.

You have agreed to be the primary attorney for this matter. This confirms that the hourly billing rates for attorneys shall be \$240.00 for senior partners, \$215.00 for partners, \$185.00 for associates and \$150.00 for non-attorney professional services.

We look forward to continue working with you. Please do not hesitate to call me at (925) 682-8000, extension 4001 if you have any questions.

Sincerely,

Gregory J. Rolan
General Counsel

Enclosures

MT. DIABLO UNIFIED SCHOOL DISTRICT

Professional Services Agreement for General Legal Services

This document ("Agreement") is a written fee contract that California law requires lawyers to have with their clients. This Agreement, made and entered into by the Mt. Diablo Unified School District ("District") and Fagen Friedman & Fulfroost LLP ("District legal counsel"), governs general legal services provided on an as needed basis for the period outlined herein.

1. Conditions

This Agreement is subject to approval by the District Governing Board ("Board"). The District is not obligated to perform under this Agreement unless and until the Agreement is either approved or ratified by the Board.

2. Scope of Services

This Agreement with District Legal Counsel is to provide general legal services on behalf of the District on an as-needed and nonexclusive basis. The District hires District legal counsel to represent their interests in connection with any matter against the District, and to advise the District on issues when requested. District legal counsel shall take any and all reasonable steps to keep the District informed of progress and to respond to the District's related inquiries. District legal counsel shall provide counsel, opinions, memoranda, and direction on general legal issues to the District Administration and Board. District legal counsel owes primary professional responsibility to the Board.

3. Legal Service Fees

The District agrees to compensate District legal counsel pursuant to the terms and conditions set forth in the *Engagement Letter*. (Addendum 1.)

4. Provision of legal services

District legal counsel shall provide legal services subject to and in strict adherence with the *District Case Management and Billing Standards*. (Addendum 2.) The *District Case Management and Billing Standards* are incorporated in this Agreement by reference. District legal counsel may negotiate exceptions to the *District Case Management and Billing Standards* under unique and/or exigent circumstances. Any exceptions to the *District Case Management and Billing Standards* must be set forth in writing and approved by the District General Counsel. Unless otherwise agreed upon, the provisions of the *District Case Management and Billing Standards* shall supersede any conflicting or contrary terms.

5. Term

This Agreement is to remain in full force and effect from July 1, 2011 through June 30, 2014. Services under this Agreement may be extended or modified by mutual agreement if reduced to writing. However, any increase in fees or billable hour rates must be approved by the Board.

6. Termination and Withdrawal

Is expressly understood that if District legal counsel or the District fails to perform its obligations under this Agreement, this Agreement shall be terminated and all of District legal counsel's and the District's rights hereunder ended. Termination shall be upon ten (10) days written notice to the defaulting party. By such termination or discharge neither party may nullify obligations already incurred for the performance or failure to perform prior to the date of termination or discharge. However, should District legal counsel elect to terminate the agreement District legal counsel shall continue representation until such a time the District not be prejudiced by the termination or withdrawal.

It is further understood that the District may terminate this Agreement without cause at any time by giving District legal counsel thirty (30) days written notice of such termination. Also, the District reserves the right to terminate and replace District legal counsel on any specific matter at any time without notice. By such termination or discharge neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination or discharge. However, should District legal counsel elect to terminate the Agreement District legal counsel shall continue representation until such a time the District cannot be prejudiced by the termination or withdrawal.

7. Submitting False Claims

Pursuant to Government Code §12650 et seq., any person including a contractor, subcontractor or a consultant, who submits a false claim shall be liable to the District for three (3) times the amount of damages which the District sustained because of the false claim. A person or entity who commits a false claim shall be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if, among other acts or omissions, the person knowingly presents or causes to be presented to an officer or employee of the District a false claim for payment or approval.

8. Indemnification

With respect to professional services to be provided under this Agreement, District legal counsel shall indemnify and hold harmless the District, its agents and employees from and against any and all actions, claims, damages and losses, including attorney's fees that may arise out of District legal counsel's negligent acts, errors or omissions.

9. Independent Contractor Status

District legal counsel and its agents and employees are independent contractors performing professional services for the District and are not District employees.

10. Assignment

District legal counsel shall not assign or transfer any interest in this Agreement or sign any claims for money due or to become due under this Agreement without prior written approval of District General Counsel.

11. Records and Audit

District legal counsel shall maintain detailed time and expense records which indicate the date, time and nature of the services rendered to the District, or expenses incurred on behalf of the District, in the District has the right to secure, review and audit billings and records before and after payment. Payment under this Agreement shall not foreclose the District's right to recover excessive or illegal payments. District legal counsel shall maintain such records for a period of at least three (3) years following termination of this agreement.

12. Product of Services

All work-product generated on behalf of the District under the terms and conditions of this Agreement shall become the property of the District and shall be delivered to District upon request. Nothing produced, in whole or in part, by District legal counsel under this agreement shall be subject to an application for copyright without prior written approval of District General Counsel. However, District legal counsel may retain and use copies for reference in this documentation of its experience and capabilities.

It is further understood that any interest of District legal counsel in studies, reports, memoranda, computation sheets or other documents prepared by District legal counsel in connection with services to be performed under this agreement shall become the property of and will be transmitted to the District upon request.

13. Malpractice Insurance

District Legal Counsel agrees to maintain professional insurance providing coverage in an amount no less than \$1,000,000.00 for claims arising from acts or omissions of the District Legal Counsel in performing services under this agreement.

14. Applicable Law and Venue

This agreement shall be governed by the laws of the State of California and the venue for all litigation relative to this Agreement shall be in Contra Costa County.

15. Severability

If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and effect in such term or provision shall be deemed stricken.

IN WITNESS THEREOF, the parties have executed this agreement.

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

Fagen Friedman & Fulfroost LLP
6300 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90048

By: _____
Gregory J. Rolan

Title: General Counsel

Date: _____

By: _____
Peter K. Fagen

Title: Managing Partner

Date: _____