

MT. DIABLO UNIFIED SCHOOL DISTRICT

Professional Services Agreement for Legal Services

This Agreement ("Agreement"), made and entered into by the Mt. Diablo Unified School District ("District") and Dannis Woliver Kelley, Attorneys at Law ("District legal counsel"), governs legal services provided on an "as needed" basis for the period stated below.

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 non-exclusive 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 agrees to cooperate with District legal counsel, to keep the firm informed of all material information and developments, and to pay District legal counsel's invoices in a timely manner, unless unusual circumstances occur. District legal counsel shall provide counsel, opinions, memoranda, and direction on general legal issues to the District Administration and Board, as requested by the Board President, the Superintendent, or the General Counsel, as appropriate. 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*.

4. Provision of Legal Services

District legal counsel shall provide legal services subject to and in adherence with the *District Case Management and Billing Standards*. 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, 2014 through June 30, 2017. Services under this Agreement may be extended or modified by mutual agreement if reduced to writing.

6. Termination and Withdrawal

It 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. 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. Insurance

District legal counsel agrees to maintain insurance coverage for commercial general liability no less than \$2,000,000.00 for each occurrence, automobile liability no less than \$2,000,000.00 combined single limit, and professional liability 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. A copy of the Certificate of Insurance is to be provided with this signed 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

Dannis Woliver Kelley
71 Stevenson Street, 19th Floor
San Francisco, CA 94105

By: _____

Lawrence M. Schoenke

Title: Interim General Counsel

Date: _____

By: _____

Mark W. Kelley

Title: Managing Shareholder

Date: _____