

LEGAL SERVICES AGREEMENT

This Legal Services (“Agreement” or “Contract”) is dated for convenience as of **MAY 15, 2024**, between the **MOUNT DIABLO UNIFIED SCHOOL DISTRICT** (“District” or “MDUSD”) and **ORBACH HUFF & HENDERSON LLP** (“Outside Counsel”). The District and Outside Counsel may be individually referred to herein as a “Party” or collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, pursuant to California Government Code § 53060, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, the District desires to retain the services as detailed herein; and

WHEREAS, Outside Counsel represents itself able and, for a consideration, willing to perform the services for the District’s Legal Department.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **SERVICES**: Outside Counsel agrees to perform the services provided for in the attached **APPENDIX A** (“Scope of Work” or “Services”).
2. **TERM; EFFECTIVE DATE**: This Agreement shall become effective upon approval and/or ratification by the District’s Board of Education in an open, noticed meeting, proper execution by the Parties and certification by the Chief Financial Officer as to the availability of funds. The term for these Services shall be for three years and shall commence on **JULY 1, 2024** shall expire on **JUNE 30, 2027** (the “Term”).
3. **COMPENSATION**: Compensation to Outside Counsel shall be based upon the billable hourly rates of Outside Counsel as set-forth the attached **APPENDIX B** (“**Schedule of Fees and Charges**”) and subject to the requirements of the attached **APPENDIX C** (“**Billing and Other Guidelines for Outside Counsel**”). The prices outlined in **APPENDIX B** are firm during the contract Term.
4. **AVAILABILITY OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION**:
 - a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement.
 - b. The amount of the District’s obligation hereunder shall not at any time exceed the amount herein stated.

- c. The District has no obligation to renew this Agreement after expiration of its Term.
5. **SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Outside Counsel agrees to comply with and is subject to the California False Claims Act (Government Code §§ 12650 *et seq.*), including treble damages and penalties as set forth in the operative statutory provision at the time of any violation.
6. **QUALIFIED PERSONNEL:** Work under this Agreement shall be performed only by competent attorneys and personnel under the supervision of and in the employment of Outside Counsel. Outside Counsel will comply with the District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the District's request, and must be supervised by Outside Counsel. Outside Counsel shall commit adequate resources to complete any project or schedule specified in this Agreement.
7. **INDEPENDENT CONTRACTOR:** Outside Counsel or any agent or employee of Outside Counsel shall be deemed at all times to be an independent contractor and not an employee of the District. Outside Counsel shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Outside Counsel or its agents and employees. Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of Outside Counsel's work only, and not as the means by which such a result is obtained. The District does not retain the right to control the means or the method by which Outside Counsel performs work under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Outside Counsel or its agents and employees. If any governmental authority should, nevertheless, determine that Outside Counsel is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Outside Counsel and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Outside Counsel shall refund any amounts necessary to effect such reduction.
8. **RESERVED.**
9. **INSURANCE:** Outside Counsel shall procure and maintain for the Term of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Outside Counsel, his or her agents, representatives or subcontractors. Specifics regarding the amount and type of insurance are set-forth in the attached **APPENDIX D** ("Insurance Requirements").
10. **LIABILITY OF DISTRICT:** DISTRICT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED TO OUTSIDE COUNSEL UNDER THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR

ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.

11. **DEFAULT:** Outside Counsel shall be in default if Outside Counsel: (a) fails to perform any term, covenant, or condition contained in this Agreement; (b) files or is the subject of a petition for bankruptcy or insolvency; or, (c) has a court-ordered receiver or trustee appointed with respect to Outside Counsel's assets.

12. **REMEDIES:** If a default has occurred and is continuing, the District may, in its sole discretion, and individually or in combination with any other remedy:
 - a. Terminate this Agreement upon ten or fewer days' written notice at the discretion of the District. District shall specify the date of termination in its written notice of termination for default. Outside Counsel shall be paid for services satisfactorily rendered through the date of termination;
 - b. Offset the amount of any outstanding liability of Outside Counsel against funds otherwise due and owing hereunder or any other agreement with Outside Counsel;
 - c. Withhold funds due hereunder;
 - d. Cure the default, in which event all amounts expended by the District in effecting such cure shall be payable upon demand, with interest from the date of incurrence at the maximum rate permitted by law; and/or
 - e. Exercise any other remedy available by law.

13. **TERMINATION**
 - a. It is expressly understood and agreed that in an Event of Default by the Outside Counsel under this Agreement, this Agreement may be terminated for cause by the District and all the Outside Counsel's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice, and no work will be undertaken by Outside Counsel after receipt of the notice of termination for cause, with the exception of actions necessary to effectuate the termination.
 - b. It is further understood and agreed that the District may terminate this Agreement for the District's convenience and without cause at any time by giving Outside Counsel thirty (30) days written notice of such termination. In such an instance, Outside Counsel shall be entitled to compensation for services performed up to the effective date of termination.
 - c. Upon receipt of written notice that this Agreement is terminated, the Outside Counsel will submit an invoice to the District for an amount that represents the value of services actually performed up to the date of termination for which Outside Counsel has not previously been compensated as provided for herein. Upon approval and payment of this invoice by the District, the District shall be under no further obligation to Outside Counsel, monetarily or otherwise.

14. **NOTICES**

Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF),

to the Party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such Party as follows:

NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	Mt. Diablo Unified School District
GENERAL COUNSEL	General Counsel, Susanne Starecki Kim
CONTACT PERSON	Betty Christians
STREET ADDRESS	1936 Carlotta Drive
CITY, STATE, ZIP	Concord, CA 94519
TELEPHONE	(925) 682-8000 x4005
EMAIL ADDRESS	stareckikims@mdusd.org christiansb@mdusd.org

NOTICE TO THE OUTSIDE COUNSEL:

OUTSIDE COUNSEL	ORBACH HUFF & HENDERSON LLP
CONTACT PERSON	Glenn N. Gould
STREET ADDRESS	6200 Stoneridge Mall Road, Suite 2256
CITY, STATE, ZIP	Pleasanton, CA 94588
TELEPHONE	(510) 999-7908
EMAIL ADDRESS	ggould@ohhlegal.com

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A Party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party pursuant to this Section.

15. CONFLICT OF FINANCIAL INTEREST

- a. It shall be Outside Counsel’s responsibility to know, and comply with, all requirements of California law pertaining Conflicts of Financial Interest in

contracting with public agencies. It is the obligation of the Outside Counsel to determine whether or not participation in a contract may constitute a conflict of interest. While the District staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Outside Counsel. Outside Counsel is responsible to notify the District immediately if it finds that a potential conflict may exist.

- b. Outside Counsel certifies that it has read, understood and will comply with conflict of interest laws and regulations, set-forth in Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270 / Conflict of Interest. Outside Counsel certifies that it does not know of any facts that constitute a violation of such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

16. **NONDISCRIMINATION**: The District is committed to providing equal opportunity for all individuals in education. Outside Counsel understands and agrees that in providing services to the District, it is Outside Counsel's obligation to comply with Board Policy 0410: Nondiscrimination in District Programs and Activities, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Outside Counsel will provide to the District under this Agreement include the provision of services to students, Outside Counsel further understands and agrees that, in providing such services to the District, Outside Counsel shall comply with Board Policy 6141: Curriculum Development and Evaluation, which recognizes that the District's curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Outside Counsel shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Agreement, Outside Counsel certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies.

17. **PROPRIETARY INFORMATION OF DISTRICT; STUDENT INFORMATION**

- a. Outside Counsel understands and agrees that, in connection with this Agreement, the Outside Counsel may have access to proprietary and/or confidential information which may be owned or controlled by the District, the disclosure of

which to third parties may be damaging to the District, its employees or students. Outside Counsel also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Outside Counsel to civil liability. Consequently, Outside Counsel agrees that all information disclosed by the District to the Outside Counsel shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Outside Counsel shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.

- b.** Outside Counsel shall comply at all times with the requirements of the Family Educational Records Privacy Act (“FERPA”) and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code sections 49073 and sequential. Outside Counsel is prohibited from accessing or using confidential student information under this Agreement unless it first obtains prior written parental consent, or an exception to federal and state privacy laws otherwise permits access to confidential student information applies. Even if access is permitted, Outside Counsel shall not use confidential student data for any purpose other than providing services to the District pursuant to this Agreement. Outside Counsel shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with state and federal law.
- c.** Use of Confidential Student Data for Program Evaluation/Studies. Outside Counsel’s access to and use of confidential student data for purposes other than provided for under this Agreement requires prior written approval from the District’s Office of Research, Planning and Accountability (“RPA”). Outside Counsel must complete and submit a Research Application to RPA and if RPA approves the Research Application, Outside Counsel must also execute a Data Use and Confidentiality Agreement (“DUA”) with RPA.
- d.** Within thirty (30) days of the termination or expiration of this Agreement, if no subsequent agreement is in place between the Parties to allow Outside Counsel to have access to the District’s confidential student data, then any such data that is in the possession of Outside Counsel shall be confidentially and securely returned to District in all forms in which the Outside Counsel is holding such data, including, if applicable, in a computer-readable format. Once such data is received by District, and, if applicable, District confirms that the computer-readable format is indeed readable, Outside Counsel shall securely destroy any remaining copies of the data that it holds in any form or media within fourteen (14) days of such confirmation from District. Outside Counsel shall destroy all such data utilizing a method of secure destruction that renders such information unreadable, such as shredding or burning, erasure of magnetic media, electronic deletion using file shredding software, or other industry-standard method of secure destruction. Upon request, Outside Counsel shall provide District with written certification that such destruction has occurred.
- e.** The confidentiality provisions of this Section shall survive the termination or expiration of this Agreement.

18. **HEALTH & SAFETY REQUIREMENTS FOR A CONTRACTOR:** If Outside Counsel will enter a District school site or facility in connection with performance of services under this Agreement or if the Outside Counsel will be in contact with District staff, contractors, or students, then the Outside Counsel shall maintain compliance with all local and state laws, health directives, orders, guidelines and policies, including but not limited to those related to COVID-19, and District policies, as updated from time to time. All costs to comply such requirements are the Contractor's responsibility. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit. Contractor agrees that it is the Contractor's responsibility to be informed on the latest public health guidance on public health emergencies and to comply with that guidance accordingly. Where a conflict exists between this Agreement and any local or state public health order related to a current Public Health Emergency, the more restrictive guidance controls.
19. **AUDIT AND INSPECTION OF RECORDS:** Outside Counsel agrees to maintain and to permit the District to audit, examine and make copies, excerpts and transcripts of all records including without limitation accurate accounting books and records, invoices, timesheets, documents, reports, student records, payroll and personnel records and other materials and data related to Outside Counsel's performance of this Agreement, whether funded in whole or in part under this Agreement. The Outside Counsel shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.
20. **SUBCONTRACTING:** Outside Counsel is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement without the prior written consent of the District.
21. **ASSIGNMENT:** It is understood and agreed that the services to be performed by the Outside Counsel under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Outside Counsel without the prior written consent of the District.
22. **WAIVER:** Either Party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.
23. **ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION:** Should any question arise as to the meaning and intent of the Agreement, the matter shall, prior to any action or resort to any other legal remedy, be referred to the Superintendent who shall decide the true meaning and intent of the Agreement.

24. **COMPLIANCE WITH LAWS AND BOARD POLICIES:** Outside Counsel shall keep itself fully informed of applicable federal, state and local laws, regulations, orders, and District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such laws, regulations, orders, District Board Policies, and Administrative Regulations as they may be amended from time to time.
25. **MODIFICATION OF AGREEMENT:** Any amendment or modification to this Agreement shall be by written instrument and shall only be effective upon execution by the duly authorized representatives of the Parties and approval or ratification by the Board of Education in an open, noticed meeting.
26. **GOVERNING LAW; VENUE:** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. The venue for all litigation relative to this Agreement shall be Concord, California.
27. **SECTION HEADINGS:** The section headings contained herein are for convenience of reference only and are not intended to define the scope of any provision of this Agreement.
28. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by the Parties to this Agreement.
29. **EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS:** Original copies of this Agreement shall be executed by the respective Party's authorized signatories. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other.
30. **SEVERABILITY:** If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
31. **APPENDICES:** The Appendices set-forth below and attached hereto are an integral and definitive part of this Agreement and are incorporated herein by this reference. In signing this Agreement, Outside Counsel certifies that it will comply with all laws, regulations, and MDUSD Board Policies; affirms that it is familiar with the laws, regulations, and MDUSD Board Policies; certifies that it does not know of any facts that constitute a violation of any such laws, regulations, and MDUSD Board Policies contained herein.

Appendix A: Scope of Work or Services
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Appendix B: Schedule of Fees and Charges
Appendix C: Billing and Other Guidelines for Outside Counsel
Appendix D: Insurance Requirements

IN WITNESS WHEREOF the Parties hereto have executed this Agreement, to be effective upon approval or ratification by the District's Board of Education on _____.

<p>ORBACH HUFF & HENDERSON LLP</p> <p>APPROVED:</p> <p>By: <u></u></p> <p>Name: <u>Glenn N. Gould</u></p> <p>Title: <u>Attorney</u></p> <p>Date: <u>June 4, 2024</u></p> <p><u>Information regarding Outside Counsel:</u> <i>(✓ one and complete W-9)</i></p> <p>Type of Business Entity:</p> <p><input type="checkbox"/> Individual, no Employees</p> <p><input type="checkbox"/> Sole Proprietorship</p> <p><input type="checkbox"/> Partnership</p> <p><input checked="" type="checkbox"/> Limited Partnership</p> <p><input type="checkbox"/> Corporation, State:</p> <p><input type="checkbox"/> Limited Liability Company</p> <p><input type="checkbox"/> Other:</p>	<p>MT DIABLO UNIFIED SCHOOL DISTRICT</p> <p>APPROVED:</p> <p>By: <u></u></p> <p>Adam Clark</p> <p>Superintendent</p> <p>Date: <u>6.4.24</u></p> <p>APPROVED AS TO FORM:</p> <p>By: <u></u></p> <p>Susanne Starecki Kim</p> <p>General Counsel</p> <p>Date: <u>6/4/24</u></p>
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APPENDIX A

Outside Counsel shall provide legal services as assigned by the District's General Counsel or Superintendent.

APPENDIX B

SCHEDULE OF FEES AND CHARGES
CALCULATION OF CHARGES

The breakdown of charges shall be as follows below for the services rendered pursuant to this Agreement.

PLEASE refer to the instructions and guidelines as set forth in Billing and Other Guidelines for Outside Counsel (Appendix C).

The hourly rate* breakdown is as follows:

Name	Associate/Partner	Hourly Rate
Glenn N. Gould	Partner	\$345.00
Christopher Wolcott	Associate	\$305.00
Adina Fox	Associate	\$305.00
Katherine Eaton	Paralegal	\$185.00

***Rate increases or changes as well as adding new billers not listed above must have prior approval from the District's General Counsel. Any request to add additional billing attorney(s) or staff must be made in writing in advance to the Legal Department, including the proposed hourly billing rate for each attorney/staff member. Outside Counsel affirms that the hourly rates at which Outside Counsel bills the District will be the lowest rate Outside Counsel charges any other public entity for comparable services.**

APPENDIX C

BILLING AND OTHER GUIDELINES FOR OUTSIDE COUNSEL

The Mount Diablo Unified School District (“the District” or “MDUSD”) is dedicated to improving student success. The District values its relationships with outside counsel as integral to the District’s mission. In-house and outside counsel alike, represent the District in legal matters as well as in aggressively protecting and advancing the interests of the District and the students it exists to serve.

The purpose of the Billing and Other Guidelines for Outside Counsel (“Billing Guidelines”) is to set forth clearly and in advance the key business terms of your Firm’s engagement. The Billing Guidelines are an effort to standardize certain aspects of the District’s outside counsel relationships and to achieve greater cost-efficiency. Counsel should adhere to these Billing Guidelines in the course of providing legal services to the District. Due to the extraordinary times and fiscal challenges confronting the District, contracted Firms are urged to seek every appropriate, creative, and cost-effective way to reduce the amount of their billings to the District. It is in the best interests of the District and outside counsel to ensure the professional, competent, and cost-effective handling of District cases.

A) GENERAL LITIGATION MANAGEMENT

- 1) Open and continuous communication between your Firm and the District is essential to an efficient working relationship. The General Counsel will be your primary contact. All communication and correspondence regarding the specific legal matter that you are working on should be directed to that attorney. You should keep us advised of significant developments in matters as they occur, and notify the General Counsel, by email or phone, at least sixty (60) days for a Special Education Due Process Hearing and ninety (90) days prior to a scheduled trial date and expect to meet with the General Counsel in advance of trial to discuss trial strategy.
- 2) Immediately inform the General Counsel when present or former Board Members, Superintendents, or senior staff (1) are likely witnesses in a matter; (2) are noticed for deposition or (3) are subpoenaed or listed as trial witnesses. Other District employees often will be better qualified to provide the information sought. We will assist in identifying those people and producing them for deposition or trial. In most cases, we should be able to show that the burden on the District of producing very senior staff or officials would outweigh the needs of the opposing party.
- 3) In order for us to make informed decisions about the management of various matters that you are handling, the District requires that counsel copy the General Counsel on ***all*** pleadings, motions, briefs, legal research memoranda, written discovery, and significant correspondence. Copies should be sent both to the General Counsel’s individual e-mail address. Please clearly identify any confidential, non-public documents with a legend or notice on the face of the document such as: “PRIVILEGED AND CONFIDENTIAL, ATTORNEY-CLIENT COMMUNICATION,” indicating ATTORNEY WORK PRODUCT where appropriate. Please bear in mind that in addition to our institutional, managerial and administrative responsibilities, the District’s General Counsel carries an active caseload of their own. Thus, we ask that you send us any requested drafts sufficiently in advance of their due date to allow for a meaningful review by us. We prefer to receive documents in digital form rather than by mail, or courier. Please send unexecuted documents, briefs, memoranda, etc., as email attachments in their original word processing formats (preferably Microsoft Word™ 2003 or later). Executed documents should be scanned into the portable document format (“.pdf”) and attached to an email. All documents should be sent to the General Counsel. Please include the

matter name, forum, and case number prominently in **all** e-mails regarding a specific matter.

- 4) In addition, Outside Counsel should download all pleadings in a case to a google drive folder created for each case being handled in state or federal court, or administrative proceeding. The google drive folder should also contain an index.

B) **BUDGETING AND REPORTING**

- 1) Case budgets and case status reports are required for matters assigned to you by the General Counsel. The Litigation Budget (EXHIBIT 1) and Case Analysis (EXHIBIT 2) forms are attached to the billing guidelines. You will need to provide us with the following materials promptly at the commencement of work on the matter:
 - i) In litigation matters, complete the Litigation Budget and Case Analysis forms attached to these Billing Guidelines. We will pay for up to one hour of attorney time for the preparation of the detailed case assessment and budget plan form, in matters where the total budget exceeds \$50,000 (fifty thousand dollars). For matters where the total budget is less than \$50,000 (fifty thousand dollars), you will need to obtain approval from the General Counsel to bill for preparation of the case budget.
 - (1) We realize that some events in litigation are beyond your control, so we view the case budget as a planning device, not a guarantee. We do expect, however, that you will manage the matter to the approved budget and seek adjustments in advance should unforeseen situations arise and causes potential budget overages. If you do not, **we reserve the right to require your Firm to absorb all or part of unapproved budget overruns.**
 - ii) In non-litigation matters, such as opinion letters, audit of policies, etc. an Initial Status Report is not required. Please give us your best cost estimates based upon the information in your possession. Budgets should be discussed as part of the monthly reporting (see below). We can be flexible about case budgets, so as long as you notify us in advance of any anticipated budget overruns, and the reasons therefore, and obtain our prior approval.
 - iii) Please also advise us in monthly status reports (and sooner, where appropriate) if you anticipate any periods of unusually intensive or concentrated activity as the matter progresses (for example, a number of depositions noticed within a short time period), which might cause the legal expenses to increase sharply. Please note this report is not necessary, unless you anticipate unexpected activity.
 - iv) A litigation management/strategy plan (in letter format) explaining how you intend to accomplish the District's stated goals and objectives in the matter, while disposing of the matter as expeditiously and cost-effectively as possible.
 - v) A risk analysis with respect to the matter that will quantify the potential exposure of the District including your best estimate of District financial exposure and any necessary reserves.
- 2) On litigation matters where the total budget exceeds fifty thousand dollars (\$50,000.00), by no later than the 20th of each month, you will be required to send us a written status/progress report on each matter, which should include an estimate (based on pre-invoices) of the amount of billings for the current month. On certain matters, we will also request a status/progress report that contains the following additional information:

- i) Any updated evaluations of potential recovery (where the District is the plaintiff), or potential liability/damages (in defense matters) along with any new facts or information which support your evaluations.
 - ii) Any significant written discovery or depositions anticipated in the next month.
 - iii) Any motions, hearings, or court proceedings anticipated in the next month.
 - iv) The status report will be sent via email, addressed to both the General Counsel and christiansb@mdusd.org.
- 3) The General Counsel may waive these requirements.

C) **STAFFING AND EFFICIENCY ISSUES**

- 1) We expect Firms working with the District to staff matters as leanly as possible. We will agree with you in advance on which attorney(s) within your Firm will have primary responsibility for the matter and on the number, names and billing rates of the partners, associates, paralegals, and legal assistants on the team. As a general rule, we want no more than two (2) attorneys (the “billing attorneys”) doing most of the work and billing most of the time on a matter. We want you to identify the billing attorneys for us in writing at the outset of the representation. They should be drawn from the individuals at your Firm who have been pre-designated to handle District work. For larger or more complex matters, we will discuss with you whether to permit additional billing attorneys on the matter. Although flexibility in staffing is important, as when a late-night drafting session requires expertise on a specific or arcane point, you should not alter the team as we have agreed without first speaking with the General Counsel.
 - i) We also understand that other Firm personnel may occasionally have to work on a matter due to job departures, vacations, illnesses, schedule conflicts, and the like, but we expect this to be the exception, not the rule. We do not expect to see these occasional billing attorneys recording more than ten percent (10%) of the total Firm time on a matter. Overly fragmented staffing produces duplication of effort, inefficiency and undue legal expense.
- 2) All billing attorneys at your Firm who are working on District matters must be either members, full-time employees, or of counsel attorneys at your Firm, unless approved by the General Counsel in advance. In the event that contract, temporary, or part-time personnel (whether attorneys or otherwise) are approved to work on a matter, they are to be billed at actual cost to your Firm, plus an approved mark-up which shall not exceed twenty (20) percent, to reflect administrative and overhead costs.
- 3) Generally, we believe that it is best for a single attorney or group of attorneys to handle a matter from beginning to end, and we expect outside counsel to strive for continuity in staffing. We will not pay for “learning” time or “orientation” time as occasional billing attorneys become involved in a matter and are brought up to speed on the facts and issues. We expect all such time to be written off as overhead.
- 4) Similarly, we will not pay for “training” time, for example, time spent on research or other activities that would likely be within the knowledge of more experienced attorneys. We are retaining your Firm for its expertise in a given field. We will not pay for attorneys to learn that area of law, and expect you to write off such time.
- 5) While it is important to assign enough people at the right levels, we expect you to have the most efficient and cost-effective staffing mix. For example:
 - i) Two (2) or more billing attorneys should not be performing the same task or activity on a matter when one billing attorney is sufficient. We want to avoid unnecessary duplication of effort, but realize that this can be a judgment call in certain situations. Outside counsel shall not bill for duplicate services performed by more than one

person, unless specifically authorized by the General Counsel. When in doubt, please discuss such situations with the General Counsel in advance.

- ii) Only one (1) attorney should bill us for attending depositions, court appearances, and meetings. We expect you to advise us in advance and obtain prior approval before having two or more attorneys attend any meeting, deposition, court appearance, IEP's or other proceedings in the matter, or trial. We reserve the right to require you to absorb all or part of any charges for the involvement of more than one attorney without prior approval.
- iii) Strive for the right balance of seniority when you staff a team. A partner or senior associate may be able to do the work of two very junior associates much more efficiently.
- iv) Do not bring in new attorneys to advise on new substantive areas without checking with us since we handle certain substantive areas in-house.
- v) If MDUSD staff ask you to advise on legal matters/issues other than those assigned to you by the Legal Department, please refer staff to direct those questions to the Legal Department. If you do provide advice on matters not assigned by the Legal Department, you may not bill for that advice. Please be aware that other attorneys may be assigned to that matter and any such advice may conflict with advice given, may not take into account relevant background facts, or may otherwise cause problems. Please do not provide legal advice to staff on matters not assigned to you by the Legal Department, in order to avoid such issues.
 - (1) We expect work to be assigned to those individuals who are most appropriate for the task in terms of their competency and experience. Attorneys who do not have substantial matter expertise should not be assigned to work on our matters.
- 6) We consider clerical, secretarial, and administrative work to be part of law office overhead and non-billable, regardless of who performs it. However, we realize that sometimes billable and non-billable work are intermixed. For example, a paralegal who is examining documents for privilege before production to the opposing party (which we view as billable work) may simultaneously sort, date-stamp, and label those same documents (which we regard as non-billable). We expect billings for such matters to reflect only the genuinely necessary legal work involved, and not the clerical or secretarial tasks.
- 7) While we are willing to pay for intra-office conferences within your firm relating to a given matter, we expect to be billed only for the most senior individual in attendance. The senior billing attorney should indicate the other individuals in attendance in their time entry for the conference. Please do not bill us for the time spent by additional billing attorneys in office conferences by using alternative billing terminology, such as "strategize." The District reserves the right to require your Firm to absorb all or part of costs of these meetings with members of your Firm. Notwithstanding the above, in certain matters we may authorize more than one billing attorney to attend an office conference, provided we have given prior approval for that practice on the particular matter. The time entries must accurately describe the work done, e.g. "consider" or "analyzed" does not accurately describe a conference between lawyers. However, if the amount of "conference time" appears disproportionate to the total Firm time spent on the matter, we will ask you to justify it.
- 8) Even where particular activities are included in a litigation budget and monthly status reports, we expect you to discuss any demurrer, motion, or other court briefing with us before it is prepared. Similarly, we expect you to advise us of any depositions which you intend to take well before they are noticed. We want to consider with you, in advance, whether such activities are genuinely necessary, the likelihood of success,

- how the activity will advance the District's goals and objectives in the matter, and whether other, more cost-effective alternatives exist.
- 9) If we routinely see billing attorneys recording more than 10 hours in a given day or 200 hours per month on a given matter, we will expect you to justify that level of billing activity to us.
 - 10) When we ask you to research, analyze or brief a particular legal issue and report back to us, we would like the clearest, most concise answer possible. The quicker the response, the better for our purposes. Brevity and clarity are desired, unless they come at the expense of accuracy. Please provide electronic copies of all written work product to the General Counsel for retention and future use. Where feasible, we appreciate receiving copies of any particularly salient or significant cases, statutes or other legal authorities along with the work product, to assist our review and understanding of the work.
 - 11) Since we select outside counsel largely based on their substantive expertise, we expect you to seek our prior approval for any significant legal research project as part of the Case Budget and Analysis plan. We look to our Firms to check their own files – whether through database searches, internal email inquiries, or other means – for prior research that might help in handling our matter.
 - i) Research in support of litigation briefs is considered approved with the approval of the underlying motion or appeal. Other legal research must be approved in advance if it is expected to cost more than one thousand dollars (\$1,000).
 - ii) If legal research is also used for matters that the Firm is handling for other clients, you should bill us only for the appropriate proportionate share of the cost. Further, as with other disbursements, the District should be billed only for the actual costs incurred, which takes into account volume discount realized by the Firm for computerized legal research or other research services.
 - 12) We will expect you to justify any document review charges which seem excessive or disproportionate for the particular task or activity involved, or which seem to involve too many billing attorneys without apparent explanation.
 - 13) Document work can be one of the most expensive items in many matters. It is imperative that costs associated with this work be carefully planned and managed. All document review and production should be charged by the specific task and should be specifically set out in the Case Budget and Analysis plan. In certain matters, the Case Budget and Analysis plan should include caps for document collection and review (or aspects thereof); at least to the extent there are sufficient data to develop the caps.
 - i) The District recognizes that, with approximately 100 facilities in the District, the task of gathering potentially responsive materials can be difficult. That process generally can be more effectively and efficiently coordinated and undertaken by Legal Office staff than outside counsel. The District expects retained counsel to coordinate any contacts with site or department level staff through the Legal Office.
 - 14) No outside counsel or experts should be retained on our behalf without our prior approval. You should list any outside counsel or experts you propose to use in the case assessment and strategy documentation mentioned above, or in your monthly case status report.
 - 15) Please note that we may agree to waive or modify some or all of the above staffing and efficiency guidelines as the particular situation demands. However, absent advance written confirmation we expect you to adhere fully to these guidelines as written.

D) **FEES AND BILLINGS**

- 1) Invoices for legal services and related costs must be submitted to the District's Legal Department on a monthly basis, and include all charges for work performed during the

preceding month. The District should receive statements no later than 45 days after the work is performed.

- 2) In submitting an invoice to the District, you are certifying:
 - i) That the legal services and disbursements reflected on the bill were in fact performed and incurred as described;
 - ii) That services and charges shown are reasonable for the legal matter involved and necessary for the proper provision of legal services; and
 - iii) you have complied with these Guidelines.
 - iv) The District reserves the right to withhold payment for any portion of an invoice that does not comply fully with these Guidelines, unless the non-compliance has been approved in advance by the Legal Department as detailed in these Guidelines.
- 3) Invoices shall include the following information to which such services or costs pertain:
 - i) A summary/cover sheet;
 - ii) The name of each matter, and for each matter;
 - iii) A brief description of the services performed;
 - iv) The date services were performed;
 - v) The number of hours, or fraction thereof, spent on the matter and by whom;
 - vi) The hourly or project rate for the service;
 - vii) A brief description of any costs incurred; and
 - viii) The signature of the billing attorney along with a statement that reads as follows: ***“I personally reviewed this invoice and ensure that the statement of services and fees, costs and any other items on the invoice are correct and that the services and costs were incurred in reasonable compliance with the Legal Services Agreement between [Name of Firm] and MDUSD.”***
- 4) “Block billing” of several different tasks in a single time entry is prohibited. We need single task entries that separate out different tasks such as telephone calls, drafting and reviewing of email, legal research, legal drafting, travel time, court appearances, attendance of meetings, etc. Billing statements that do not show a separate time charge for each task will be returned unpaid for further breakdown.
- 5) All time entries for conferences, meetings, letters, telephone calls, or other forms of communication must indicate the individuals involved and the purpose or subject matter of the communication.
- 6) All time charges should be billed in tenth-of-an-hour increments. There shall be no fixed minimum charges for certain tasks.
- 7) We must approve in advance any hourly rate increases for any individual performing services for the District. We expect the hourly rates at which you bill the District will be the lowest rates your Firm charges to any other public entity for comparable services.
- 8) The District asks Firms to seek every appropriate, creative, and cost-effective way to reduce the expense of its outside legal services. We encourage you to propose innovative billing arrangements that will make sense for the both of us.
- 9) Time spent preparing, reviewing, editing or explaining billing statements is non-billable.
- 10) In no event shall the District be liable for interest or late charges for payments.
- 11) As noted above, while we expect to pay your hourly rates for work performed on our matters, we consider certain items to be part of your Firm’s overhead or insufficiently related to our matters to justify billing the District.

E) **COSTS AND DISBURSEMENTS**

- 1) The District will reimburse Firms for reasonable, documented and itemized out-of-pocket disbursements and charges incurred on our behalf with the exceptions and limitations set forth below. In all matters, your invoice to us for all disbursements

and charges must reflect your actual, net cost without mark-ups or surcharges. Please retain all invoices, receipts, and other back-up documentation for costs and disbursements in a matter.

- 2) All expense for outside experts or vendors are to be paid by the Firm and billed through to the District at cost. We will reimburse you for actual charges. Unless approved in advance, we will pay only for one copy (electronic and hard) of trial, hearing or deposition transcripts. You should always seek the lowest possible charge for court reporting fees, including any possible volume discounts. Transcription expenses must identify the court reporter and the specific services provided.
- 3) ***In light of the extraordinary fiscal constraints upon the District, no travel-related charges may be incurred without prior written approval from the General Counsel.*** The District will not be charged for local travel or for any travel time or expenses between your Firm's offices and District facilities. When working on District matters, we expect your Firm to look for alternatives to travel, such as conference calls or videoconferences that accomplish the same goal with fewer burdens.
- 4) All other costs and disbursements should be reasonable and necessary.
 - i) The use of couriers or messenger services is discouraged. If material can be sent electronically, do not waste money on overnight delivery.
 - ii) In-house photocopying charges may not exceed ten cents (\$0.10) per page of black and white copies and twenty-five cents (\$0.25) per page of color copies – with no additional labor charge. To avoid unnecessary copying costs, you should use alternative electronic exchange of documents, such as “e-faxing” or other secure transmission capabilities.
 - iii) The District discourages the use of facsimiles. Faxes may be billed only at the actual cost of the telephone connection, for outgoing faxes only. Any additional charges will be disallowed.
 - iv) The District will pay for long distance charges at the actual cost billed to your Firm. Local calls and cellular phone use is treated as part of overhead and will not be reimbursed.
- 5) Lexis-Nexis, Westlaw, and other similar electronic research expenses incurred with our prior approval are to be paid directly by your Firm and itemized and included in your statements. When electronic research charges to the District exceed 30 minutes please obtain prior approval, Firms are required to reconcile any volume-based discounts received from computerized research vendors to the discounts passed on to the District. The true-up should include an analysis of the monthly discounts as provided by computerized research vendors and reconciliation by month of the Firm's charges to the District. If your Firm has a fixed-rate agreement with a legal research provider that requires us to follow a different procedure, please discuss this with the General Counsel. Generally, subscriptions to online legal services are considered general overhead and are not reimbursable.

F) **CONTACT WITH EMPLOYEES:** Please do not contact District employees, other than the Legal Department staff without notification and approval from the General Counsel. It can be disruptive and often the employees are unsure who you represent or how to respond. If you wish to communicate with a District employee, contact the General Counsel to discuss the purpose of the contact. The General Counsel will coordinate necessary meetings, or contacts or otherwise assist you in doing so.

G) **AUDITS:** The District reserves the right to audit and inspect your Firm billings and related records, for compliance with these guidelines; and any applicable laws, policies and

regulations. The District shall be entitled, upon request, to receive any necessary documentation of the reasonableness and necessity of any fees or costs/disbursements billed to the District by your Firm; your Firm's professional liability insurance coverage (or self-insurance) for legal claims against your Firm.

- H) **MEDIA INQUIRIES:** You may be asked to work on District related matters that are of interest to the media, legal profession or the general public. The District has a communication department, which has responsibility for responding to such inquiries. Your Firm is not authorized to respond to the media or public on the District's behalf without prior specific authorization from the General Counsel. You are expected to refer media inquiries to the General Counsel.

- I) **CONFLICTS:** Please notify the General Counsel immediately if you identify any actual or potential conflicts of interest.

Exhibit 1: Litigation Budget

Law Firm	
Case Name:	

Description	Billable Hours	Rate	Total
Case Assessment, Development and Administration			
Facts Investigation/Development			
Analysis/Strategy			
Experts/Consultants			
Document/File Management			
Budget			
Settlement			
Other Case Activity			
Pretrial Pleadings and Motions			
Pleadings			
Preliminary			
Court Mandated Conferences			
Dispositive Motions			
Other Written Motions and Submissions			
Class Action Certification and Notice			
Discovery			
Written Discovery			
Document Production			
Depositions			
Expert Discovery			
Discovery Motions			

Description	Billable Hours	Rate	Total
Other Discovery			
Trial Preparation & Trial			
Fact Witnesses			
Expert Witnesses			
Written Motions and Submissions			
Other Trial Preparation			
Trial and Hearing Attendance			
Post-Trial Motions and Submissions			
Enforcement			
Appeal			
Appellate Motions and Submissions			
Appellate Briefs			
Oral Argument			
Expenses			
Court Fees			
Subpoena Fees			
Other (Expert Fees)			
TOTAL			

Exhibit 2: Case Analysis

- I. Basic Case Information**
- II. Case Review/Summary**
- III. Statement of Facts**
- IV. Analysis of Legal Claims & Likelihood of Success**
- V. Recommendation for Settlement or Trial**

Billing and Other Guidelines for Outside Counsel

ACKNOWLEDGEMENT FORM

Date: June 4, 2024

Attn: Betty Christians, christiansb@mdusd.org

Re: Receipt and Acknowledgement of Billing and Other Guidelines for Outside Counsel

This will acknowledge, on behalf of the undersigned law firm, that we have received and reviewed the Billing and Other Guidelines for Outside Counsel. We know of no reason why our firm cannot comply with the Billing Guidelines, and accept their terms as a condition of the District agreeing to engage us as Outside Counsel.

If we become aware of any conflict, or of any reason why we cannot comply with the Guidelines, we agree to bring it to your immediate attention.

Name of Law Firm: Orbach Huff & Henderson LLP

Title: Attorney

Signature:



APPENDIX D

INSURANCE REQUIREMENTS

Outside Counsel shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Outside Counsel, its representatives, employees or subcontractors.

I. MINIMUM SCOPE OF INSURANCE:

- a.** Commercial General Liability Insurance with limits not less than \$2,000,000 (two million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- b.** Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 (one million dollars) each accident.
- c.** Professional Liability (E & O) Insurance with limits not less than \$2,000,000.00 (two million dollars) each occurrence and in the aggregate. Coverage must at a minimum apply to negligent Errors and Omissions arising out of professional services, performed under the contract, with any deductible not to exceed \$100,000 each claim.
 - i.** Additional Insured Status: The District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Outside Counsel including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Outside Counsel's insurance.
 - ii.** Primary Coverage: For any claims related to this contract, the Outside Counsel's insurance coverage shall be primary insurance coverage as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Outside Counsel's insurance and shall not contribute with it.
- d.** Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. A waiver of the Automobile liability insurance requirements may be requested by Consultant through the District's Contracts Office provided that Consultant will not use any automobiles in the performance of this Agreement. The parties understand and agree that the District shall rely upon the representations that the Consultant shall make in any such waiver.

II. ADDITIONAL REQUIREMENTS:

- a.** Waiver of Subrogation: Outside Counsel hereby grants to District a waiver of any right to subrogation which any insurer of said Outside Counsel may acquire against the District by virtue of the payment of any loss under such insurance. Outside Counsel agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.
- b.** Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.
- c.** Self-Insured Retentions: Self-insured retentions must be declared to and approved by the District. The District may require the Outside Counsel to purchase coverage with a

- lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- d. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.
 - e. Verification of Coverage: Outside Counsel shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District within 30 days of completion of the executed contract. However, failure to obtain the required documents prior to the work beginning shall not waive the Outside Counsel's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
 - f. Special Risks or Circumstances: District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.