

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	24-1518
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Enactment Number	24-1320
Enactment Date	6/26/2024 er



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Jenine Lindsey, Interim General Counsel

**Meeting Date** June 26, 2024

**Subject** Amendment No. 1 to Memorandum of Understanding and Engagement Policy ("MOUEP") by and between District and Orrick, Herrington & Sutcliffe LLP

**Ask of the Board**  Approve Amendment  
 Ratify Amendment

**Description of the Changes** (What are the changes? Why are they needed?) This amendment will allow Orrick, Herrington & Sutcliffe to provide more of the same legal services to the District for bond securities law, tax law, strategic planning and governance matters and other legal services on an as needed basis, in a new not to exceed amount of \$109,000 for fiscal year 2023-2024 only. All other terms and conditions of the original agreement will remain in full force and effect.

**Change to Not-To-Exceed Amount & Funding** The Not to Exceed amount would be increased from \$50,000 to \$109,000 for the 2023-24 fiscal year only.

**Source(s), If Any** General Purpose funds

**Attachment(s)**

- Amendment No. 1
- 22-1371 MOUEP (Board Enact. #22-2046)



AMENDMENT NO. 1

to

MOU and Engagement Policy between OUSD and Orrick, Herrington & Sutcliffe LLP

("Original Agreement")

This Amendment ("AMENDMENT") amends the attached Original Agreement, inclusive of any prior amendments to the Original Agreement (together, "AGREEMENT"). Except as explicitly stated herein, all provisions and terms of the Agreement remain unchanged and in full force and effect as originally stated.

1. The PARTIES hereby agree to amend the AGREEMENT as stated herein.

A. Services.

The SERVICES are unchanged.

The SERVICES have changed as indicated below:

A description of the changes in the SERVICES is attached.

The changes in the SERVICES involve the following: Orrick, Herrington & Sutcliffe, LLP will provide more of the same legal services to the District for bond securities law, tax law, strategic planning and governance matters and other legal services on an as needed basis, increasing the not to exceed amount for fiscal year 2023-24 only from \$50,000 per fiscal year to \$109,000. The not to exceed amount for the services provided during the 2024-2025 fiscal year will remain \$50,000.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Term.

The term of the AGREEMENT is unchanged.

The term of the AGREEMENT has changed as indicated below:

Original End Date: \_\_\_\_\_ New End Date: \_\_\_\_\_

C. Compensation.

The not-to-exceed amount in the AGREEMENT is unchanged

The not-to-exceed amount in the AGREEMENT has changed as indicated below:

Original not-to-exceed amount is \$ 50,000 per fiscal year .

The original not-to-exceed amount shall be increased by: \$ 59,000 for FY 2023-24 only OR The original not-to-exceed amount shall be decreased by: \$ \_\_\_\_\_

The new not-to-exceed amount is \$ 109,000 for 2023-24 only .

- D. **Insurance.** To the extent that the AGREEMENT required less than following insurance coverage amounts, by signing this AMENDMENT, VENDOR agrees, unless waived under the terms of the AGREEMENT, that it shall maintain Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate. All other terms in the AGREEMENT regarding Commercial General Liability Insurance remain the same.
- E. **Suspension.** To the extent that the AGREEMENT did not contain a provision regarding suspension of the AGREEMENT, VENDOR agrees, by signing this AMENDMENT, that if OUSD, at its sole discretion, develops health and safety concerns related to the VENDOR's provision of SERVICES, then the OUSD Superintendent or an OUSD Chief may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend this AGREEMENT, in which case VENDOR shall stop providing SERVICES under this AGREEMENT until further notice from OUSD. OUSD shall compensate VENDOR for the SERVICES satisfactorily provided through the date of suspension.
- F. **Legal Notices.** To the extent the AGREEMENT did not contain the following provisions, legal notices may be sent either (i) via email, (ii) personally delivered during normal business hours, or (iii) sent by U.S. Mail (certified, return receipt requested), to the contact identified in the Agreement. VENDOR agrees that the address for legal notice to OUSD is 1011 Union St., Site 946, Oakland, CA 94607.
2. The PARTIES acknowledge that this AMENDMENT, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
3. Each PARTY has the full power and authority to enter into and perform this AMENDMENT, and the person(s) signing this AMENDMENT on behalf of each PARTY has been given the proper authority and empowered to enter into this AMENDMENT, except that only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have authority under the Education Code or Board Policy to sign contracts for OUSD and only under limited circumstances, with ratification by the OUSD Governing Board being required. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this AMENDMENT or as legally binding in any way.
4. OUSD shall not be bound by the terms of this AMENDMENT unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, Chiefs, Deputy Chiefs, or the General Counsel as authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this AMENDMENT and to be bound by its terms and conditions:

VENDOR

Name: John Palmer Signature: [Signature]  
Position: Partner Date: 6.5.24

OUSD

Name: Jenine Lindsey Signature: Jenine A. Lindsey  
Position: Interim General Counsel Date: June 6, 2024

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)

Benjamin Davis, President, Board of Education 6/27/2024

Name: Kyla Johnson-Trammell Signature: [Signature]

Position: Superintendent & Secretary, Board of Education Date: 6/27/2024

**Template approved as to form by OUSD Legal Department**



Board Office Use: Legislative File Info.	
File ID Number	22-1371
Introduction Date	11/30/22
Enactment Number	22-2046
Enactment Date	11-30-2022 CJH



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Joshua Daniels, Chief Governance Officer

**Meeting Date** November 30, 2022

**Subject** Memorandum of Understanding and Engagement Policy  
Contractor: Orrick, Herrington & Sutcliffe, LLP  
Services For: Legal Department

**Ask of the Board** Ratification by the Board of Education of Memorandum of Understanding and Engagement Policy by and between District and Orrick, Herrington & Sutcliffe LLP, San Francisco, CA, for the latter to provide legal services to the District for bond securities law, tax law, strategic planning and governance matters and other legal services on an as needed basis, for the period of July 1, 2022 through June 30, 2025, in an amount not to exceed \$50,000.00 in a fiscal year.

**Background** Orrick, Herrington & Sutcliffe has a longstanding relationship with the District and serves as bond counsel, as well as counsel on parcel tax matters and other bond and fund transfer related matters. The cost of legal services for bond work is paid out of the bond proceeds.

**Competitively Bid** Was this contract competitively bid? No.  
If no, exception: Specialized Services (legal services).

**Fiscal Impact** Funding resource: General Purpose fund - not to exceed \$50,000 per fiscal year.

**In-Kind Contributions** N/A

**Attachments** Memorandum of Understanding and Engagement Policy

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File ID Number	22-1371
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**MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
ORRICK, HERRINGTON & SUTCLIFFE LLP LAW FIRM**

**1. INTENT**

This Memorandum of Understanding (hereinafter “MOU” or “Agreement”) authorizes the Oakland Unified School District Office of General Counsel (hereinafter “General Counsel”) to establish professional services agreements in the form of Letters of Engagement with ORRICK, HERRINGTON & SUTCLIFFE LLP, with offices in San Francisco, California (hereinafter "Counsel" or “Contractor”), to provide legal services to Oakland Unified School District for bond securities law, tax law, strategic planning and governance matters and other legal services on an as needed basis. The not-to-exceed amount from all Letters of Engagement under this MOU shall not exceed \$50,000 in a fiscal year.

Outside of the not-to-exceed amount, this MOU also authorizes the General Counsel to engage Counsel pursuant to the terms of this MOU in the form of Letters of Engagement to provide legal services relating to bond deals authorized by the OUSD Governing Board.

This MOU is effective July 1, 2022 and shall govern the engagement of Counsel for the Oakland Unified School District (“District” or “OUSD”) on or after June 30, 2022. Any exceptions to this MOU must be approved in writing by the Chief Governance Officer/General Counsel (hereinafter “General Counsel”).

**2. TERMS AND CONDITIONS**

**2.1 Term of Agreement.** The term of this agreement shall be July 1, 2022 to June 30, 2025 and may be extended by written agreement of both parties.

**2.2 Notice of Termination.** OUSD may at any time terminate this Agreement upon not less than thirty (30) days written notice to Counsel. OUSD shall compensate Counsel for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this agreement for cause should Counsel fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, Counsel shall pay the additional cost. OUSD’s right to terminate this Agreement is not its exclusive remedy but is in addition to all other remedies available to the OUSD by law, in equity, or under the provisions of this Agreement. Upon any termination of this Agreement, Counsel shall immediately provide OUSD with complete and accurate copies or originals - where appropriate

- of all documents in its possession belonging to OUSD. Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.

**2.3 Choice of Laws.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

**2.4 Licenses and Permits.** Counsel shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

**2.5 Conflict of Interest.** Counsel shall not hire any officer or employee of OUSD to perform any service by this Agreement. Counsel affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Counsel's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing. Counsel has undertaken a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to OUSD or has obtained a written conflicts waiver from the General Counsel.

**2.6 Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, Counsel, or subcontractors are to use drugs on these sites.

**2.7 Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, age, or any other legally protected class; therefore, Counsel agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. Counsel shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class. In addition, Counsel agrees to require like compliance by all its subcontractor(s).

**2.8 Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

### 3. AREAS OF AUTHORITY

3.1 **Independent Contractor.** This is not an employment contract. Counsel is an independent contractor or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. Counsel understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint ventures of OUSD, and are not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Counsel shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes with respect to Counsel's employees. In the performance of the work herein contemplated, Counsel is an independent contractor, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

3.2 **No Rights in Third Parties.** This agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

3.3. **Assignment.** The obligations of Counsel under this Agreement shall not be assigned by Counsel without the express prior written consent of OUSD.

3.4 **Ownership of Documents.** Except as agreed to by the Parties, all documents created by Counsel pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Counsel, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation. Except as agreed to by the Parties, OUSD shall be entitled to access to and copies of these materials during the progress of the work. Except as agreed to by the Parties, any such materials in the hands of Counsel or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. Counsel may retain a copy of all materials produced under this Agreement for its use in its general business activities.

3.5 **Copyright/Trademark/Patent/Ownership.** Except as agreed to by the Parties, Counsel understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. Except as agreed to by the Parties, OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD.

3.6 **Confidentiality.** Counsel and all Counsel's agents, personnel, employee(s), and subcontractor(s) shall maintain the confidentiality of all information and documents received. Counsel understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

#### 4. INDEMNIFICATION

Counsel shall defend, indemnify and save harmless the District and its officers, State Trustee, agents, and current and former employees from and shall defend them against any and all loss, cost, damage, injury, liability, and claims including but not limited to claims for injury to or death of a person, including employees of Counsel or loss of or damage to property, arising directly or indirectly from Counsel's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Counsel, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

#### 5. INSURANCE

Without in any way limiting Counsel's liability pursuant to the "Indemnification" section of this Agreement, throughout the term of the MOU Counsel shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:

Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) for each accident, injury, or illness; and

Comprehensive Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limits for bodily injury and property damage, including coverage for owned and non-owned and hired auto coverage, as applicable; and

Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

Professional Liability Insurance with limit not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than one hundred thousand dollars (\$100,000) per claim, covering legal malpractice arising from any services provided under this Agreement.

Except for Professional Liability Insurance, all liability policies that this Section requires Counsel to maintain shall provide for the following: (i) name as additional insureds the District, the School Board, the State Trustee, and the District's officers, agents, and current and former employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

Within thirty (30) days of approval of this Agreement, Counsel shall deliver to the General Counsel a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation,

major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the General Counsel.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of the OUSD . If at any time said policies of insurance lapse or become canceled, this Agreement shall become voidable at the complete discretion of the District. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or Counsel to OUSD.

## **6. PRIOR AUTHORIZATION**

Bills for work done without prior written authorization will not be processed for payment or paid unless approved by the General Counsel (which in all references to General Counsel includes any person designated by the General Counsel to monitor the matter) in writing. Under certain exigent circumstances, specifically described work may be commenced prior to the issuance of an engagement letter if expressly approved by the General Counsel. Only those lawyers authorized in advance or subsequently authorized by the General Counsel for a particular matter may work on the matter. Time spent by lawyers not approved on the matter will not be paid by the District.

## **7. CASE ANALYSIS AND BUDGET**

Within 10 days of assignment of a claim, investigation and/or litigation matter, Counsel shall provide to the General Counsel and/or designee a proposed budget and preliminary case analysis (as to claims and litigation matters).

The case analysis, if requested, shall include the following information:

- a. A brief summary of facts and plaintiff's legal theories;
- b. An assessment of the strengths and weaknesses of the case;
- c. An overview of counsel's strategy for handling the matter including whether counsel recommends filing dispositive motions and utilizing Alternative Dispute Resolution.

The General Counsel or designee shall approve or revise the proposed budget for claims, investigation and/or litigation matters within 10 days of receipt.

## **8. BILLING AND INVOICES**

All Counsel representing the District are to provide the following information on bills or invoices submitted to the District for payment of legal services provided:

- a. Name of the project or matter;
- b. The matter or number or other designation contained in the engagement letter;
- c. Description of the services sufficient for the District to understand what case-related task was performed by each attorney or paralegal on a daily basis;
- d. The name of each attorney or paralegal working on the matter;

- e. The hours worked by each billing person for each task described (task billing) daily to the nearest .1 of an hour;
- f. The hourly rate for each billing person;
- g. An itemization of any cash or cost disbursements;
- h. The name of the General Counsel attorney authorizing the work or to whom Counsel reports;
- i. Total fees and costs billed to date; and
- j. Total fees and costs paid by the District to date.

A one-page summary shall accompany each statement or invoice indicating (a) the firm name submitting the invoice/statement; (b) the OUSD assigned matter number and firm reference number; (c) total hours billed and corresponding fees and costs for the current billing period; (d) payments credited during the current billing period; (e) any past-due amount; and (f) total amount due. Do not include any description of services performed on this one-page summary.

All invoices shall be accompanied by the following verification statement signed by the lead attorney assigned to the matter:

**I personally reviewed this invoice dated \_\_\_\_\_. All entries are in accordance with the Letter of Engagement or other agreements and instructions pursuant to which this invoice is submitted. I have ensured that the statement of services and the fees, costs and any other items on the invoice are correct and that the services and costs were incurred in compliance with all agreements between me and/or my firm and the General Counsel of the Oakland Unified School District.**

Invoices or bills not containing all the information required above shall be returned unpaid with a request for resubmission in the proper form.

#### **9. IMPORTANT BILLING AND PAYMENT NOTES**

- a. The hourly billing rate for ongoing legal services on bond, securities law, tax law, strategic planning, and governance matters shall not exceed \$1,085 per hour for partners, \$800 per hour for senior associates, \$600 per hour for associate attorneys and \$400 per hour for paralegals. These fees are for on-going, non-deal related work.
- b. Effective July 1, 2022 through June 30, 2025, fees for deal-related work shall be paid from bond proceeds and shall be negotiated by the General Counsel or designee and Counsel, on a series-by-series basis and shall not exceed \$160,000 per series unless so authorized by the Board .
- c. Except for bond deal matters, bills for counsel fees and expenses relating to ongoing legal services must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or legal invoices, unless otherwise instructed by the General Counsel, should be addressed to:

General Counsel  
Office of the General Counsel  
Oakland Unified School District  
1000 Broadway Suite 440  
Oakland, CA 94607  
or emailed to  
[Josh.Daniels@ousd.org](mailto:Josh.Daniels@ousd.org) and  
[Anjanette.Duckworth@ousd.org](mailto:Anjanette.Duckworth@ousd.org)

- d. The District will not pay for fees/costs not reflected on bills or invoices.
- e. The District shall not reimburse for time spent for filing, file indexing, proofreading, typing, court filing and the like, unless approved in advance by the General Counsel. Unless approved in advance by the General Counsel, the District shall not pay for secretarial overtime or associated expenses, office supplies, local telephone calls and/or invoice preparation.
- f. The District will pay only the actual costs for reasonable expenses without any premiums or markups.
- g. The District shall reimburse Counsel for necessary photocopying and other expenses at cost, subject to the following limitation:
  - i. Copying expense - 10¢ per page
  - ii. Facsimile expense - 10¢ per page
- h. Legal research in excess of three (3) hours on a discrete issue in the case must be pre-approved by the General Counsel. The District shall not be charged or reimburse Counsel for electronic research costs, such as Lexis or Westlaw charges.
- i. The District shall be billed and shall pay for services computed by tenths of an hour. The District will not pay "flat rate" charges such as "X" for all telephone calls under a set duration or "Y" for a review of documents (correspondence/emails/etc.).
- j. General administrative matters, such as budget preparation and discussion of invoices from the firm to the District for services are not billable.
- k. Counsel's hourly rates shall be approved by General Counsel. Rate issues or request for adjustments must be raised directly with the General Counsel.
- l. Pursuant to Government Code section 6103, as a public entity the District is exempt from paying court fees, including filing fees, and court reporter fees (except for the actual transcription fee of court testimony) ("court fees"). As a result, the District shall not reimburse any court fees since they do not need to be paid on the District's behalf.
- m. If, at any time during the engagement, Counsel has any question regarding the meaning or implementation of the provisions of this policy, Counsel must immediately bring that issue to the attention of the General Counsel for resolution.
- n. The General Counsel retains the right to audit all bills or files that are or have been the subject matter of any billing in the past. Such an audit will require Counsel to produce any and all documentation that would support the billing submitted by Counsel. Counsel will produce



any individual who has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. Counsel acknowledges that the General Counsel may utilize its own personnel, an outside auditing service, or such other company or service as the General Counsel designates, to perform such audits.

#### **10. PERFORMANCE OF COUNSEL**

- a. Except as otherwise agreed by the General Counsel (or designee), the District will typically pay for only one attorney from a firm to attend trials, court appearances, depositions, interviews, conferences, and meetings. The attorney making the appearance shall be the attorney approved for that function, and must possess a working knowledge of the case.
- b. Except as otherwise agreed by the General Counsel (or designee), where media contact or exposure is anticipated, Counsel must immediately notify the General Counsel. The District may designate the appropriate spokesperson to respond to inquiries. Counsel will not make comments to the press and will do so only with the prior input and approval of General Counsel.
- c. If, at any time during the defense of the case, a conflict of interest develops between or among any of the District's employees being represented, the conflict must be disclosed immediately to General Counsel.
- d. A case report must be provided to the General Counsel 72 hours in advance of any meeting or appearance where settlement authority will be requested. If the matter requires Governing Board approval of settlement authority, said case report must be received in sufficient time to meet OUSD Governing Board agenda deadlines. The report must contain all information pertinent to the District in evaluating settlement issues.
- e. Upon request from the General Counsel or designee, Counsel shall provide case status updates and drafts of any court filings.
- f. Specific to electronic discovery, Counsel shall, immediately upon being retained, contact the General Counsel to ask whether a litigation hold notice/do not destroy has been issued. If the notice has been issued, Counsel shall do the following: obtain a copy, verify that all necessary persons have received it, and send electronic copies to the General Counsel. If the notice hasn't been issued, Counsel shall determine who will be issuing it. If Counsel is asked to issue the notice, Counsel shall coordinate with the appropriate District site to get the necessary information (basic facts, persons with knowledge, contact information). During the pendency of the litigation, Counsel shall ensure that supplemental notices are issued to any additional persons identified as having relevant information. If the case continues for more than six (6) months, Counsel shall issue periodic reminder notices to all recipients of litigation holds.
- g. Consulting with or retention of outside experts and for Independent Medical-Psychological Examinations requires authorization from the General Counsel. Requests for expert witnesses shall be discussed with and authorized by the General Counsel. Counsel are reminded that they are responsible for ensuring their compliance with the requirements of

federal and state confidentiality statutes, including FERPA and HIPAA. If appropriate, Counsel should have retained experts and consultants sign a HIPAA Business Associate Agreement.

h. It is Counsel's obligation to assess the advisability of early settlement and to make appropriate recommendations regarding settlement to the General Counsel. All settlement demands and offers to mediate or arbitrate must be immediately reported to the General Counsel.

#### **11. CORONAVIRUS/COVID-19**

Counsel agrees to immediately adhere to and follow any District directives regards health and safety protocols including, but not limited to, providing District with information regarding possible exposure of OUSD employees by any employee, subcontractor, agent, or representative of Counsel, and information necessary to perform contact tracing.

#### **12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

Counsel certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that Counsel does not appear on the Excluded Parties List (<https://www.sam.gov/>).

#### **13. SEVERABILITY**

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

#### **14. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

#### **15. CAPTIONS AND INTERPRETATIONS**

Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

#### **16. CALCULATION OF TIME**

For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

#### **17. W-9 FORM**

If Counsel is doing business with OUSD for the first time, complete and return with the signed MOU a W-9 form.

**18. INCORPORATION OF RECITALS AND EXHIBITS**

Any recitals and exhibits attached to this MOU are incorporated herein by reference. Counsel agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this MOU, the terms and provisions of this MOU shall govern.

**19. INTEGRATION/ENTIRE AGREEMENT OF PARTIES**

This MOU constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This MOU may be amended or modified only by a written instrument executed by both Parties.

**20. COUNTERPARTS**

This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**21. CONTRACT PUBLICLY POSTED**

This MOU, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

**22. CONTRACT CONTINGENT ON OUSD GOVERNING BOARD APPROVAL**

OUSD shall not be bound by the terms of this Agreement until it has been formally approved or ratified, as applicable, by OUSD’s Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval or ratification. This Agreement shall be deemed approved or ratified when it has been signed by the Board of Education and/or the Superintendent as its designee.

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.

**ORRICK HERRINGTON & SUTCLIFFE LAW FIRM**

Name: John Palmer


Signature: 

Position: Partner

Date: 10-28-22

*One of the terms and conditions to which Counsel agrees by its signature is not to expect or demand payment for any Services performed prior to the parties, particularly OUSD, validly and properly executing this MOU until this MOU is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD Chief Governance Officer, stating that OUSD has validly and properly executed this Agreement. Counsel specifically acknowledges and agrees to this term/condition on the above date.*

**OUSD**

Name: Joshua R. Daniels Signature: 

Position: Chief Governance Officer Date: Nov 15, 2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: 

Position: Secretary, Board of Education Date: 12-1-2022

***Approved as to form by OUSD Legal Department.***

Name: Gary Yee  
Position: President, Board of Education

Signature:  Date: 12-1-2022






# 22-1371 MOU-Orrick

Final Audit Report

2022-11-15

Created:	2022-11-15
By:	ANJANETTE DUCKWORTH (anjanette.duckworth@ousd.org)
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