

Board Office Use: Legislative File Info.	
File ID Number	12-0638
Introduction Date	March 14, 2012
Enactment Number	
Enactment Date	



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date March 14, 2012
Subject AGREEMENT WITH SETH ECKSTEIN, ATTORNEY AT LAW

Action Requested Approval of Agreement Between the District and Seth Eckstein to provide legal services

Background Seth Eckstein, attorney is being retained on an hourly basis to provide legal services to the District under the supervision of attorneys in the District's Legal Department.

Discussion Seth Eckstein, attorney is being retained on an hourly basis to provide legal services to the District under the supervision of attorneys in the District's Legal Department on an as needed basis. The term of the agreement is December 1, 2011 to June 30, 2013, the cost of the agreement shall not exceed \$85,000 in a fiscal year and the hourly billing rate is established at \$50 per hour.

Recommendation Approval by the Board of Education of the Agreement with Seth Eckstein, Attorney to provide legal services

Fiscal Impact Funding resource name: General Purpose

Attachment

- Agreement

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**MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT POLICY
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT and
Seth Eckstein, Attorney at Law**

1. INTENT

Intent of this Memorandum of Understanding. This Memorandum of Understanding (hereinafter "MOU") authorizes the Oakland Unified School District Office of General Counsel (hereinafter or "General Counsel") to establish professional services agreements in the form of Letters of Engagement with Seth Eckstein (hereinafter "Counsel" or "Contractor") to provide legal services to Oakland Unified School District on an as needed basis. The cumulative amount of Letters of Engagement under this MOU shall not exceed \$ 85,000 in a fiscal year, at an hourly billing rate shall not exceed \$50 per hour. This MOU is effective immediately and shall govern the engagement of Counsel for the Oakland Unified School District ("District" or "OUSD") on or after December 1, 2011. Any exceptions to this MOU must be approved in writing by the General Counsel.

2. TERMS AND CONDITIONS

2.1 Term of Agreement. The term of this agreement shall be December 1, 2011 to June 30, 2013 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 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 is governed by the laws of the State of California.

2.4 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.

2.5 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, CONTRACTORS, or subcontractors are to use drugs on these sites.

2.6 Anti-Discrimination. Consistent with the policy of OUSD in connection with all work performed under this MOU, 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 or sexual orientation. 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. In addition, Counsel agrees to require like compliance by all its subcontractor(s).

2.7 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, partner, or joint venture 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 Ownership of Documents. 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. The OUSD shall be entitled to access to and copies of these materials during the progress of the work. 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.

3.4 Copyright/Trademark/Patent/Ownership. 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. 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.

3.5 Confidentiality. The Counsel and all Counsel's agents, personnel, employee(s), and/or 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 indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof 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.

In addition to Counsel's obligation to indemnify the District, Counsel specifically acknowledges and agrees that Counsel has an immediate and independent obligation to defend the District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Counsel by the District and continues at all times thereafter.

5. Prior Authorization

Bills for work done without such 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.

6. 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 with 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.

7. Important Billing and Payment Notes

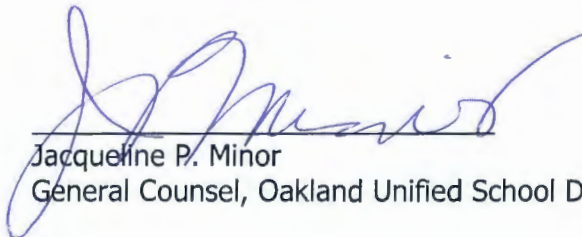
- a. Bills for counsel fees and expenses must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or legal invoices should be addressed to:

General Counsel
 Office of the General Counsel
 Oakland Unified School District
 1025 Second Avenue, Room 406
 Oakland, CA 94606
 Or emailed to
 Jacqueline.minor@ousd.k12.ca.us

- b. The District will not pay for amounts not reflected on bills or invoices.
- c. 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. The District does not reimburse or pay for long distance travel costs, which is travel outside of the San Francisco Bay Area, or travel time without the prior written approval of the General Counsel.
- d. The District will pay only the actual costs for reasonable expenses without any premiums or markups.
- e. 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 - 50¢ per page
- f. 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.).

- g. General administrative matters, such as budget preparation and discussion of invoices from the firm to the District for services are not billable.
- h. Counsel's hourly rates shall be approved by General Counsel. Rate issues or request for adjustments should be raised directly with the General Counsel.
- i. 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.
- j. If, at any time during the engagement, Counsel has any question regarding the meaning or implementation of the provisions of this policy, Counsel should immediately bring that issue to the attention of the General Counsel for resolution.
- k. 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.

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



 Jacqueline P. Minor
 General Counsel, Oakland Unified School District

Date: 3/5/12



 Seth Eckstein

Date: 3/5/12

 President, Board of Education
 Oakland Unified School District

Date: _____

 Secretary, Board of Education
 Oakland Unified School District

Date: _____