

## **AGREEMENT FOR LEGAL SERVICES**

### **I. PARTIES**

This Agreement for Legal Services (“Agreement”) is entered into by and between the law firm of ATKINSON, ANDELSON, LOYA, RUUD & ROMO, a professional corporation, hereinafter referred to as “Attorney” or the “Law Firm” and, Ohlone Community College District, hereinafter referred to as “College.”

### **II. PURPOSE**

The College desires to retain and engage Law Firm to provide legal advice and to perform legal services, including but not limited to personnel, employer-employee relations, facilities and land use, board governance, student matters, administrative and court hearings, tax and finance and all aspects of general education law under the terms and conditions set forth in this Agreement. Law Firm accepts this engagement on such terms and conditions.

It is understood that the principal attorneys providing services will be Paul M. Loya, overall supervision; Deanna J. Mouser and Marleen L. Sacks, labor and employment, litigation and Education Code issues; Patrick A. Gunn and Lisa R. Allred, business and facilities. Other attorneys may handle specific matters with the approval of the President or designee. Chesley D. Quaide, Practice Group Leader, will be responsible for the District’s account and for its satisfaction with the firm’s services.

### **III. TERMS AND CONDITIONS**

#### **A. Fees for Services**

##### **1. Hourly Rate Services**

College agrees to pay the Law Firm at the following standard hourly rates: \$225/hour for Partners and Senior Counsel, \$200/hour for Associates, and \$160/hour for Paralegals and Legal Assistants.

These rates shall increase by \$10/hour on July 1, 2009 and by an additional \$10/hour on July 1, 2010.

##### **2. Fixed Fee Services**

The services listed in Exhibit A shall be performed by the Law Firm for the fixed fees described therein. Costs and expenses (for example written materials for workshops) are in addition to these fixed fees. Negotiations with third parties related to these services shall be charged at the hourly rates set forth in paragraph A.1., above.

### 3. Alternate Fee Arrangements

The Law Firm and the College may mutually agree in writing to a fee arrangement for engagement on a particular matter which differs from the fee structure set forth in paragraph A.1, above. Examples of possible alternate arrangements include, but are not limited to: (a) a percentage of the monetary savings achieved on behalf of the College, (b) an increase in the agreed hourly rate if a predetermined result is achieved on behalf of the College, and (c) a fixed rate for periodic onsite services. Pursuant to Education Code section 7, the Governing Board hereby delegates to the Superintendent or designee authority to agree to alternate fee arrangements on particular matters.

### 4. Costs and Expenses

In addition to the fees described herein, the College agrees to pay for certain ancillary services, costs and expenses. These shall include, but are not limited to, long distance telephone charges (at cost), incoming and outgoing faxes (\$2.00 per page), photocopies (\$.20 per page), messenger services (\$25/hour plus mileage rate), computer database searches (billed at vendor's standard retail rate), word processing (\$40.00 per hour), travel expenses, including airfare, mileage, parking, meals, and lodging, deposition and court reporter fees, transcript costs, witness fees (including expert witnesses), process server fees, and other similar third party expenses.

The Law Firm shall not be obligated to advance costs on behalf of the College; however, for purposes of convenience and in order to expedite matters, the Law Firm reserves the right to advance costs on behalf of the College with the prior approval of the Superintendent or designee in the event a particular cost item exceeds \$2,000.00 in amount, and without the prior approval of the Superintendent or designee in the event a particular cost item totals \$2,000.00 or less.

### 5. Experts and Consultants.

If the Law Firm retains, with authorization from the College, experts or consultants for the benefit of the College, rather than the College contracting directly with any expert or consultant, it is agreed that the College shall pay a five percent (5%) fee ("consultant processing fee") on such expert and consultant costs paid by the Law Firm in order to offset certain costs to the Law Firm resulting from administering and initially paying such expert and consultant fees on behalf of the College.

## B. Billing Practices

1. A detailed description of the work performed and the costs and expenses advanced by the Law Firm will be prepared on a monthly basis as of the last day of the month and will be mailed to the College on or about the 15th of the following month, unless other arrangements are made. Payment of the full amount due, as reflected on the monthly statement, will be due to the Law Firm from the College by the 10th of the month following delivery of the statement, unless other arrangements are made.

2. Hourly rate services shall be charged to the College at a minimum increment of one-quarter hour. When time spent by Attorney on a particular service exceeds one quarter hour, the charge will be rounded up to the next one quarter hour increment.

3. Certain tasks shall be billed at established minimum time increments. These include: (a) Telephone conference (.25 hour), (b) Email correspondence (.25 hour), (c) Standard written correspondence (.50 hour), (d) Provide a document (.50 hour) (e) legal research (.50 hour)

4. Law Firm may charge the full hourly rate to more than one client for the same time period. Examples include, but are not limited to: (a) Law Firm charges College for telephone advice rendered while Attorney is traveling in connection with a matter for another client, (b) Law Firm charges College for written email advice provided while Attorney is performing labor negotiation services for another client, rendered during a break in those negotiations.

5. College agrees to review the Law Firm's monthly statements promptly upon receipt and to notify the Law Firm, in writing, with respect to any disagreement with the monthly statement. Failure to communicate written disagreement with the Law Firm's monthly statement within thirty (30) days of the College's receipt thereof shall be deemed to signify the College's agreement that the monthly billing statement accurately reflects the legal services performed; and the proper charge for those legal services.

C. Termination of Representation on a Particular Matter

The Law Firm reserves the right to discontinue the performance of legal services on behalf of the College on a particular matter upon the occurrence of any one or more of the following events:

1. Upon order of a court of law requiring the Law Firm to discontinue the performance of legal services;

2. Upon a determination by the Law Firm in the exercise of its reasonable and sole discretion, that state or federal legal ethical principles require it to discontinue the performance of legal services;

3. Upon failure to pay the Law Firm's bill when due; or

4. Upon failure to cooperate with Law Firm as described in paragraph F.

In the event that the Law Firm ceases to perform legal services for the College on a matter, the College agrees that it will promptly pay to the Law Firm any and all unpaid fees or costs advanced. Further, the College agrees that, with respect to any litigation where the Law Firm has made an appearance in a court of law on its behalf, the College will promptly execute an appropriate Substitution of Attorney form. Any termination of Law Firm's representation on such a matter may be subject to approval by the applicable court of law.

D. Communication between College and the Law Firm

The Law Firm will keep the College regularly and currently informed of the status of each matter and will consult with the College when appropriate. Copies of significant correspondence and documents will be sent to the person designated by the College for that

purpose. In the event that the College needs to reach the Law Firm and the attorney sought is unavailable, the College should leave a message for the attorney at the office at which the attorney is resident, disclosing the nature and urgency of the call. It is the Law Firm's policy that all calls will be returned promptly and in any event no later than within one business day of receipt of the call. If the College has not received a return call within that time, the College should call again. Messages which the College considers to be urgent should not be communicated exclusively by email or to an attorney's personal communication device, but should also be left at the office at which the attorney is resident.

E. Consent to Joint Representation

The College acknowledges that from time to time it may seek for Law Firm to perform legal services on a matter affecting two or more public education local agencies. Examples of such situations include, but are not limited to, preparing a joint use agreement between a district and a community college district and preparing an agreement between a district and a county office of education for sharing the services of an employee. In such situations before proceeding with representation, Law Firm shall seek separate written consent to joint representation from all involved parties if permissible according ethical principles applicable to attorneys.

The College acknowledges that it is often in the best interest of the College for such representation to commence without undue delay which may result from waiting until the next regularly-scheduled Board meeting. Therefore, pursuant to Education Code section 7, the College hereby delegates to the Superintendent or designee authority to consent to joint representation in the circumstances described in this paragraph.

F. Client Cooperation.

The College understands and agrees that, in order for the Law Firm to represent the College effectively, it is necessary for the College to assist and cooperate with the Law Firm during this engagement. The College agrees to (1) make its employees and officials available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions and court proceedings, review drafts of documents, and perform other activities in connection with the representation; and (3) provide complete and accurate information and documents to us on a timely basis. Non-cooperation will be grounds for the Law Firm's withdrawal from representing the College on a particular matter. It is essential that the College and the Law Firm maintain open communications.

G. Protection of Client Confidences – High Tech Communication Devices.

The Law Firm is aware of its important obligation to preserve the secrets and confidences of its clients which it holds in precious trust for them. To that end it is important that the College and the Law Firm agree from the outset what kinds of communications technology the Law Firm should employ in the course of representing the College. For example, the exchange of documents and other information using email or other types of electronic communications involves some risk that information will be retrieved by third parties with no right to see it. Even the use of facsimile machines can cause problems if documents are sent to numbers where the documents sit in open view.

Therefore, the College should only provide the Law Firm with cellular numbers, facsimile numbers and email addresses which are acceptable to the College for receiving confidential communications from the Law Firm. The College agrees that the Law Firm may use any of the cellular numbers, facsimile numbers and email addresses other than those which you specify in writing that the Law Firm should not use. The College may use the Technology Questionnaire form attached as Exhibit B for this purpose.

H. Miscellaneous

1. The Law Firm maintains errors and omissions insurance coverage applicable to the services to be rendered.

2. The parties agree that the Law Firm, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the College.

3. This Agreement represents the entire agreement between the College and the Law Firm unless a particular matter is covered by a separate written agreement (for example, an agreement for an alternate fee arrangement as described in paragraph A.3.) By execution of this Agreement the College certifies that it has carefully reviewed and understands the contents of this Agreement and agrees to be bound by all of its terms and conditions. Furthermore, the College acknowledges that the Law Firm has made no representations or guarantees regarding the outcome, or the time necessary to complete or resolve a particular matter. No change or waiver of any of the provisions of this Agreement will be binding on either the College or the Law Firm unless the change is in writing and signed by both the College and the Law Firm.

4. After a file on a matter is closed, the College has a right to request the Law Firm to return the file to the College. Absent such a request, the Law Firm shall retain the file on the College's behalf.

**IV. BINDING ARBITRATION**

If any dispute arises out of, or related to, a claimed breach of this Agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type, or description, regardless of the facts or the legal theories which may be involved, including attorney malpractice, such dispute shall be resolved by binding arbitration by a single arbitrator. Each side will bear its own costs and attorneys fees. The parties agree to waive their right to a jury and to an appeal.

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**V. DURATION**

This Agreement shall be of three (3) years duration commencing August 1, 2008 and terminating on June 30, 2011 and shall thereafter continue from month to month at the then current rate schedules until modified in writing by agreement between the Law Firm and the College. Either the College or the Law Firm may terminate this Agreement on thirty (30) days' written notice.

“Law Firm”

ATKINSON, ANDELSON, LOYA, RUUD &  
ROMO

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney

“College”

Ohlone Community College District

Dated: \_\_\_\_\_

By: \_\_\_\_\_

## EXHIBIT A

### Fixed Fee Services

1. 1 full day of training (up to 8 hours) = \$3,500.00
2. ½ day of training (up to 4 hours) = \$2,500.00
3. 2 hour training = \$2,000.00
4. 1 hour training = \$1,500.00
5. Architect's Agreement = \$500.
6. Front-end Bid Documents for School Construction Project = \$1,000.
7. Disability Accommodation Forms and Policies = \$500.

EXHIBIT B

TECHNOLOGY QUESTIONNAIRE

Please understand that by agreeing to the use of any means of communication other than in-person private meetings or two-way (as opposed to multiparty) land line telephone conversations, you will be giving your consent to, and accepting any risks of disclosure of, confidential information to third parties that may be attendant upon the use of those means of communication.

The Law Firm **May Use** the following cellular phones, facsimile numbers and email addresses for the purposes of transmitting confidential information:

Cellular telephone number(s): \_\_\_\_\_

Facsimile number(s) \_\_\_\_\_

Email Address(es): \_\_\_\_\_

The Law Firm **Should Not Use** the following cellular phones, facsimile numbers and email addresses for the purposes of transmitting confidential information. Note that if you use an email address when communicating with us, you consent to our use of that number to reply to you even if you have indicated below that we should not use that email address.

Cellular telephone number(s): \_\_\_\_\_

Facsimile number(s) \_\_\_\_\_

Email Address(es): \_\_\_\_\_

Are there other communications and confidentiality issues which we should be aware of in connection with this engagement? Yes[\_\_\_] No[\_\_\_] If yes is checked, please explain:

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

Dated: \_\_\_\_\_ Signature \_\_\_\_\_

Client Name \_\_\_\_\_ Name of Signer \_\_\_\_\_