



DISTRICT SCHOOL BOARD OF PASCO COUNTY

Kurt S. Browning, Superintendent of Schools

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638

Purchasing Services

Michael J. Woodall, CPPO, Purchasing Agent

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November 19, 2013

MEMORANDUM

TO: Honorable School Board Members

FROM: Michael J. Woodall, CPPO, CPPB, Purchasing Agent *MJW.*

SUBJECT: Approval of Contract and Permission to Place Purchase Order
McClain, Alfonso, & Meeker, P.A. - Attorney Services for The Board

The attached document is a contract for legal services between the offices of McClain, Alfonso, & Meeker, P.A. and The School Board. As you know, The Board has been represented by this firm for many years. Considering services have been satisfactory, Mr. Dennis Alfonso was contacted to verify the firm's willingness to enter into a three-year contract, renewable annually at the mutual agreement of the parties. Mr. Alfonso, on behalf of the firm, has agreed to do so.

Legal services are exempt from the bidding process under Florida Administrative Rule 6A-1.012(11)(a). The contract outlines the services required by The Board and has been negotiated as a yearly retainer fee structure with hourly rates specified for services not covered under the retainer (see Exhibits A and B). The hourly rates for services outside of the retainer are fixed; however, the total for hourly services will vary depending upon the type of services required during the contract period. The first year term of the contract will be November 19, 2013 – November 31, 2014. Thereafter, due to the annual Board reorganization, the second and third year term of the contract will run from December 1 through November 31.

We are requesting approval of the contract at this time, and permission to place a purchase order in the amount of \$62,585.40 (payable at the rate of \$5,215.45 per month) to cover the retainer portion (Exhibit A) of the contract, and \$180,000 to pay invoices for hourly services incurred outside the retainer (Exhibit B) which will be approved by the appropriate Director. All payments made are being funded through general funds.

Should you have any questions or wish to discuss this further, please contact me at your earliest convenience.

Attachments

MJW/dam

Date/Time: November 13, 2013 08:26:00

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT made as of the 19th day of November 2013 by and between THE DISTRICT SCHOOL BOARD OF PASCO COUNTY, FLORIDA (hereinafter the "School Board") and McCLAIN, ALFONSO & MEEKER, P.A., a Legal Professional Association (hereinafter "Law Firm");

WITNESSETH

WHEREAS the School Board and the Law Firm desire to enter into an Agreement whereby the Law Firm shall provide legal services, advice and counsel to the School Board and both parties desire to set forth the provisions of their agreement in writing,

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and agreements herein contained, and other good and valuable consideration the receipt and the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Law Firm shall provide legal services, advice and legal counsel to the School Board during the term of this Agreement, of the nature and type described herein and on the attached Exhibit A.

2. Conflicts of Interest: The School Board shall be given most favored client status by the Law Firm during the term of this Agreement. If any other representation of the Law Firm presents a potential conflict of interest with the Law firm's representation of the School Board, the Law Firm shall avoid such other representation and cause the other client to secure other legal representation.

3. Compensation:

A. **RETAINER**: The School Board shall compensate the Law Firm on a retainer basis plus expenses (see Exhibit B) for the types of the legal work of the Law Firm (the Retainer Services) described below and in Exhibit A:

- 1) Attend board meetings
- 2) Attend special board meetings
- 3) All communications with school board members
- 4) All communications with the Superintendent
- 5) General and routine legal services (see Exhibit A)

The School Board will pay the Law Firm \$62,585.40 per year (payable at the rate of \$5,215.45 per month) for the first year of the Retainer Services. The annual retainer fee for subsequent renewal periods may be adjusted with School Board approval on the annual date of reorganization.

B. **HOURLY**: The School Board shall compensate the Law Firm at the hourly rate of \$150.00 per hour, plus expenses (see Exhibit B) for legal work outside of and beyond the scope of legal services to be provided under the Retainer Services. The hourly rate specified herein shall apply to the efforts of all experienced attorneys

in the Law Firm as a "blended hourly rate". Law clerks and legal assistants will be compensated at \$50.00 per hour.

Legal work in the hourly category shall include:

- 1) Litigation in State and Federal Courts
- 2) Litigation in arbitration proceedings
- 3) Litigation in administrative hearings, including due process hearings
- 4) Employee grievance proceedings
- 5) Real estate acquisitions, easements and closings
- 6) Attendance at collective bargaining sessions, if requested
- 7) Workers Compensation proceedings, if requested
- 8) Out-of-county lobbying
- 9) Borrowing Instruments, C.O.P.'s, Bonds Issues

C. An ongoing matter will cease to be a retainer matter and will become an hourly matter when one of the following events occurs:

- 1) A notice of claim or civil process is filed with the State, Department of Insurance or a civil action is filed with the County, State or Federal Clerk of the Court, commenced or served in a lawsuit, arbitration, grievance, above the level 2, due process or administrative proceeding;
- 2) When the Law Firm is instructed by the Superintendent or School Board to initiate a lawsuit, arbitration, grievance, due process or administrative proceeding;
- 3) A situation occurs, that does not fit within the above two categories, that justifies a change to an hourly billing. The Law Firm will request in writing that the matter become an hourly matter and set forth the justification and expected cost (non-binding) or its request, which will be considered by the School Board. Granting the Law Firm's request will not be unreasonably withheld.

D. At all times the Law Firm will attempt to facilitate the amicable resolution of the disputes between the School Board and others before the dispute becomes a formal legal or administrative proceeding, on terms that are acceptable to the Superintendent or the School Board. The Law Firm will pursue all appropriate methods of alternative dispute resolution, such as mediation, with the intent of avoiding formal litigation.

4. Periodic Billing: The monthly retainer will be paid to the Law Firm on the first of each month for the previous month's Retainer Services. The Law Firm shall submit its bills for hourly services to the School Board on a monthly or quarterly basis and the School Board shall pay said bills within 30 days of such billing.

5. Term of Agreement: The agreement period shall be in effect November 19, 2013 to November 31, 2014 and shall be subject to two subsequent annual renewals (beginning December 1, of each subsequent year) by the School Board on such terms and conditions as the parties may determine.

6. Procedure for Adjustment of the Retainer or the Hourly Rate: To accommodate the School Board's annual budgeting process, the retainer and the hourly rate for the legal services are not subject to modification during the fiscal year. Thereafter, if either party desires to modify said hourly rate, it shall cause the subject of modification to be placed on the agenda of the School Board no later than the final meeting in October of any calendar year, and any change in the hourly rate will become effective on the following December 1st.

7. Library: The Law Firm will continue to maintain and pay for its own education law library, and will purchase any insurance and computer hardware/software that it deems necessary to support it including Lexis and Westlaw usage.

8. Specialized Legal Services: Although it is contemplated that the School Board will use the Law Firm for all of its legal services, if the legal needs of the School Board present a demand for a unique or specialized legal skill that the Law Firm does not regularly provide to its clients, the Law Firm shall inform the School Board that such specialized legal services are required or recommended and the Law Firm shall identify and recommend that the School Board retain such other competent legal counsel at School Board expense to represent it with respect to the exceptional matter only. Any legal matter referred to other legal counsel will require the approval of the School Board.

9. Conflict with Superintendent: In the event that it becomes necessary or desirable for the School Board to retain a separate attorney because of circumstances that may create a conflict of interest between the Superintendent and the School Board, the Law Firm shall represent the School Board in all such instances.

10. Insurance: The Law Firm shall maintain in full force and effect its present insurance policy of professional liability insurance with its existing coverage limits. The Law Firm may change insurers or increase the limits of coverage, at its option. The Law Firm will provide the School Board with evidence of this coverage upon request. (Exhibit C.)

11. Grievances and Suits: The Law Firm will notify the School Board of the existence of any civil actions or grievances, filed against the Law Firm in any court or with the Florida Bar respectively, concerning legal services rendered under this Agreement.

12. Ownership of Files: All files and the contents thereof, heretofore or hereafter created and maintained by the Law Firm in the performance of its duties as set out herein, shall be deemed to be the property of the Law Firm; provided, however, that nothing contained in this contract shall be deemed to preclude the Law Firm from delivering to the School Board or any other person designated by the School Board, all documents possessed by the Law Firm, where such documents are classified as public records under Florida law.

13. Access to Information and Materials: In the recognition of the confidential relationship between the School Board and the Law Firm, the School Board does hereby provide to the Law Firm full and complete access to any and all information, documentation, photographs, files, reports, evaluations, drafts, letters, papers, computer print-outs, contracts, agreements, conveyances, publications, resolutions, budgets, budget materials, records, minutes, agendas, correspondence, notices, memorandums, policies, and any and all other writings or written materials in the possession, custody or control of the School Board and/or the unit of local government. The School Board does further agree to provide the Law Firm, without cost and upon request, with the original or copies thereof, of any and all of the foregoing materials, whether or not such materials are classified as "confidential" or otherwise classified to exclude the same from being a public record.

14. Waiver of Conflict: In the event that this Agreement is terminated, any conflicts of interest shall be deemed to be immediately waived.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated.

THE DISTRICT SCHOOL BOARD
OF PASCO COUNTY, FLORIDA

BY:

KURT S. BROWNING
Superintendent

Chair

McCLAIN, ALFONSO & MEEKER, P.A.

BY: _____

DENNIS J. ALFONSO
Shareholder

EXHIBIT "A"

DESCRIPTION OF LEGAL SERVICES

1. Included in Retainer are those items listed in Section 5A of the Agreement, including without limitation:

A. Attend all regular and special School Board meetings, except as otherwise excused by the School Board.

B. When requested by the Director of ESE, attend I.E.P. meetings that are complex, involve substantial legal issues, or that have attorneys present that represent the student.

C. Promptly respond to written, oral and telephonic communications from School Board Members, Superintendent and staff.

D. Represent the School Board at public meetings or gatherings in Pasco County as requested by the School Board or Superintendent.

E. Attend F.S.B.A.A. and N.S.B.A.A. meetings and conferences as deemed necessary.

F. Prepare items for the School Board's agenda when requested by the Superintendent.

G. Represent the School Board orally and in writing when correspondence or communications are referred or submitted for the Law Firm's response.

H. Review and prepare construction contracts, service contracts, employment contracts, and other contracts, as requested or as necessary.

I. Review and make procedural and substantive recommendations regarding employee suspension, discipline, or termination.

J. Review and make procedural and substantive recommendations regarding student suspension and expulsion.

K. Review and update established legal procedures as necessary.

L. Review and make recommendations regarding proposed School Board rules and policies.

M. Perform all other legal services as requested which are not "hourly" work.

2. Included in Hourly Rate:
 - A. Pre-litigation review and advice regarding liability claims.
 - B. Litigation in County, State and Federal Courts.
 - C. Litigation in arbitration proceedings.
 - D. Litigation in administrative hearings, including due process hearings.
 - E. Employee grievance proceedings.
 - F. Real estate acquisitions, and closings.
 - G. Attendance at collective bargaining sessions, as requested.
 - H. Workers' Compensation proceedings, as requested.
 - I. Out-of-County appearance for the purpose of lobbying for or against proposed legislation.
 - J. Borrowing Instruments - Review and approval of documents and issuance of any necessary legal opinions related to tax anticipation notes, certificates or participation bond issues or other borrowing documents.

EXHIBIT "B"

EXPENSES

1. The School Board shall be responsible for and shall reimburse the Law Firm for the following expenditures:

A. Administrative fees and court costs, including but not limited to, filing fees, recording fees, court reporter and transcript fees, subpoena fees, service fees and expert witness fees.

B. Long distance telephone calls on School Board related business.

C. Out-of-County Travel Expenses - Reimbursements shall be as provided in School Board policy.

D. Photocopy expense for hourly matters.

E. Membership dues for Florida School Board Attorneys' Association.

F. Exceptional postage, overnight delivery services, and courier services shall be paid as follows: The School Board shall pay Law Firm the sum of \$45.00 per month for the agreement period to cover the cost of postage expenses. The Law Firm shall keep records of amounts expended for such expenses. The Law Firm and School Board shall annually evaluate the amounts expended by Law Firm for such expenses and adjust the amount of the monthly payment to be an average of the prior year's expenditures for such amounts.

G. L.R.P. Special Education materials.

2. The School Board shall NOT be required or expected to reimburse the Law Firm for the following expenses:

A. Clerical or secretarial services.

B. Postage, other than as specifically addressed herein.

C. Local fax transmission charges.

D. In-county travel expenses.

E. Photocopy expense for retainer matters.