

SUPPLEMENTAL AGREEMENT FOR ATTORNEY INVESTIGATIVE SERVICES

THIS AGREEMENT is effective December 20, 2017, between the ALAMEDA UNIFIED SCHOOL DISTRICT ("Client") and the law firm of LOZANO SMITH, LLP ("Attorney") (each a "Party" and collectively the "Parties"). This Agreement supplements the September 13, 2017 agreement between the parties and the verbal agreements of October 14, 2017 and December 5, 2017 authorizing the investigative services to exceed the fee cap stated in Paragraph II of this Agreement. Attorney shall provide impartial investigative services in order to facilitate the rendering of legal advice in anticipation of litigation, as requested by Client and based on the following terms and conditions,

I. ENGAGEMENT. Attorney is being retained to conduct an impartial investigation of the

2017. Penelope Glover will be the primary investigator under the direction of Dulcinea Grantham, both of whom are attorneys employed by Attorney, who will interview witnesses, collect and review relevant information, and report to Client. In the report, Attorney will summarize and analyze the evidence and make factual findings. Attorney will use its employment law and investigation expertise to assist Client in determining the issues to be investigated and to conduct the investigation. Client understands that Attorney cannot guarantee any particular results, including the costs and expenses of representation, and that the findings will be based on an impartial and professional evaluation of the evidence. Client is solely responsible for obtaining legal advice from Client's in-house counsel and/or retained attorney concerning such issues as whether and to what extent Client will take action in response to the investigation report and/or findings, whether the investigation report and evidence are privileged or should be produced to third parties, how to preserve evidence, how to advise employees regarding confidentiality and retaliation, and matters other than the investigation itself. Client is hereby advised of the right to seek independent legal advice regarding this Agreement.

II. RATES TO BE CHARGED. Client agrees to pay Attorney for services rendered based on the attached rate schedule. Agreements for legal fees on other-than-an-hourly basis may be made by mutual agreement for special projects (including as set forth in future addenda to this Agreement). Fees related to investigative services under this supplemental Agreement will not exceed \$25,000 without express permission from Client.

III. REIMBURSEMENT. Client agrees to reimburse Attorney for actual and necessary expenses and costs incurred in the course of providing legal services to Client, including but not limited to expert, consultant, mediation and arbitration fees. Attorney shall not be required to advance costs on behalf of Client over the amount of \$1,000 unless otherwise agreed to in writing by Attorney. Typical expenses advanced for Client, without prior authorization, include messenger fees, witness fees, expedited delivery charges, travel expenses, court reporter fees and transcript fees. Client authorizes Attorney to retain experts or consultants to perform services for Client in relation to litigation or Specialized Services.

IV. MONTHLY INVOICES. Attorney shall send Client a statement for fees and costs incurred every calendar month (the "Statement"). Statements shall set forth the amount, rate and description of services provided. Client shall pay Attorney's Statements within thirty (30) calendar days after receipt. An interest charge of one percent (1%) per month shall be assessed on balances that are more than thirty (30) calendar days past due, not to exceed 10% per annum.

V. COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT. The Parties recognize that all legal advice provided by Attorney, including the performance of the investigation and any related decisions such as whom to interview, what documents to review, and how to analyze findings, is protected by the Attorney-Client and Work Product Privileges. In addition to regular telephone, mail and other common business communication methods, Client hereby authorizes Attorney to use facsimile transmissions, cellular telephone calls and text, unencrypted email, and other electronic transmissions in communicating with Client. Unless otherwise instructed by Client, any such communications may include confidential information.

VI. POTENTIAL AND ACTUAL CONFLICTS OF INTEREST. If Attorney becomes aware of any potential or actual conflict of interest between Client and one or more other clients represented by Attorney, Attorney will comply with applicable laws and rules of professional conduct.

VII. INDEPENDENT CONTRACTOR. Attorney is an independent contractor and not an employee of Client.

VIII. TERMINATION.

- a. Termination by Client. Client may discharge Attorney at any time, with or without cause, by written notice to Attorney.
- b. Termination by Mutual Consent or by Attorney. Attorney may terminate its services at any time with Client's consent or for good cause. Good cause exists if (a) Client fails to pay Attorney's Statement within sixty (60) calendar days of its date, (b) Client fails to comply with other terms of this Agreement, including Client's duty to cooperate with Attorney in protecting Client's interests, (c) Client has failed to disclose material facts to Attorney or (d) any other circumstance exists that requires termination of this engagement under the ethical rules applicable to Attorney. Additionally, to the extent allowed by law, Attorney may decline to provide services on new matters or may terminate the Agreement without cause upon written notice to Client if Attorney is not then providing any legal services to Client.
- c. Following Termination. Upon termination by either Party: (i) Client shall promptly pay all unpaid fees and costs for services provided or costs incurred pursuant to this Agreement up to the date of termination; (ii) unless otherwise required by law or agreed to by the Parties, Attorney will provide no legal services following notice of termination; (iii) Client will cooperate with Attorney in facilitating the orderly transfer of any outstanding matters to new counsel, including promptly signing a substitution of counsel form at Attorney's request; and (iv) Client shall, upon request, be provided the

Client's file maintained for the Client by Attorney and shall sign acknowledgment of receipt upon delivery of that file. For all Statements received by Client from Attorney prior to the date of termination, Client's failure to notify Attorney in writing of any disagreement with either the services performed or the charges for those services as shown in the Statement within thirty (30) calendar days of the date of termination shall be deemed Client's acceptance of and agreement with the Statement. For any billing appearing for the first time on a Statement received by Client from Attorney after the date of termination, failure to notify Attorney in writing of any disagreement with either the services performed or the charges for those services within thirty (30) calendar days from receipt of the Statement shall be deemed to signify Client's acceptance of and agreement with the Statement.

IX. MAINTENANCE OF INSURANCE. Attorney agrees that, during the term of this Agreement, Attorney shall maintain liability and errors and omissions insurance.

X. DISPUTE RESOLUTION.

a. Dispute Regarding Fees. Any dispute as to attorney fees and/or costs charged under this Agreement shall to the extent required by law be resolved under the California Mandatory Fee Arbitration Act (Bus. & Prof. Code §§ 6200, et seq.).

b. Binding Arbitration. Except as otherwise set forth in section (b) above, Client and Attorney agree to submit all disputes to final and binding arbitration, either following mediation which fails to resolve all disputes or in lieu of mediation as may be agreed by the Parties in writing. Either Party may make a written request to the other for arbitration. If made in lieu of mediation, the request must be made within sixty (60) calendar days of the action giving rise to the dispute. If the request for arbitration is made following an unsuccessful attempt to mediate the Parties' disputes, the request must be made within ten (10) calendar days of termination of the mediation. The Parties shall make a good faith attempt to select an arbitrator and complete the arbitration within ninety (90) calendar days. If there is no agreement on an arbitrator, the Parties shall use the Judicial Arbitration and Mediation Service (JAMS). The arbitrator's qualifications must meet the criteria set forth above for a mediator, except, in addition, the arbitrator shall be an attorney unless otherwise agreed by the Parties. The arbitrator's fee shall be shared equally by both Parties. Each Party shall bear its own attorney fees and other costs. The arbitrator shall render a written decision and provide it to both Parties. The arbitrator may award any remedy or relief otherwise available in court and the decision shall set forth the reasons for the award. The arbitrator shall not have any authority to amend or modify this agreement. Any arbitration conducted pursuant to this paragraph shall be governed by California Code of Civil Procedure sections 1281, et seq. By signing this Agreement, Client acknowledges that this agreement to arbitrate results in a waiver of Client's right to a court or jury trial for any fee dispute or malpractice claim. This also means that Client is giving up Client's right to discovery and appeal. If Client later refuses to submit to arbitration after agreeing to do so, Client maybe ordered to arbitrate pursuant to the provisions of California law. Client acknowledges that before

signing this Agreement and agreeing to binding arbitration, Client is entitled, and has been given a reasonable opportunity, to seek the advice of independent counsel.

c. Effect of Termination. The terms of this section shall survive the termination of the Agreement.

XI. ENTIRE AGREEMENT. This Agreement with its exhibit supersedes any and all other prior or contemporaneous oral or written agreements between the Parties. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

XII. SEVERABILITY. Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then, to the extent allowed by law, the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.

XIII. NON-WAIVER. None of the provisions of this Agreement shall be considered waived by either Party unless such waiver is specified in writing.

XIV. NO THIRD PARTY RIGHTS. This Agreement shall not create any rights in, or inure to the benefit of, any third party.

XV. ASSIGNMENT. The terms of this Agreement may not be assigned to any third party. Neither Party may assign any right of recovery under or related to the Agreement to any third party.

SO AGREED:

ALAMEDA UNIFIED SCHOOL DISTRICT

LOZANO SMITH, LLP


By: _____ Date: 12/21/17
Its: Chief HR Officer


Karen M. Rezendes December 20, 2017
Managing Partner Date