

**AGREEMENT BETWEEN
THE COUNTY OF SANTA CLARA AND
MORGAN HILL UNIFIED SCHOOL DISTRICT
FOR LEGAL SERVICES**

This Agreement (“Agreement”) is made effective July 1, 2022, by and between the County of Santa Clara (“County”) and Morgan Hill Unified School District (“District”) so that the County may provide legal services to District.

1. Nature of Services.

County, through the Office of the County Counsel, will provide legal services for District including but not limited to research and general advice as requested by District.

2. Term of Agreement.

This Agreement is effective from July 1, 2022, to and including June 30, 2023, unless terminated earlier in accordance with Section 4.

3. Compensation.

A. For the fiscal year ending June 30, 2023, County shall be compensated for services provided under this Agreement at the hourly rate of \$278.00 for attorneys, \$124.00 for paralegals, and reimbursable expenses and costs incurred. County will provide District with a new rate schedule no less than thirty days prior to when a new rate schedule will apply.

B. County will provide District with monthly invoices, which shall be accompanied by a detailed summary of activities undertaken over the course of the preceding month.

C. District will cooperate with the Office of the County Counsel completely, including without limitation, promptly paying all invoices for services rendered and costs advanced. In no event will payments be made later than 45 days after receipt.

4. Termination.

A. Either party may terminate this Agreement without cause by giving the other party ten (10) days’ written notice. However, if County elects to terminate this Agreement, District’s rights under any pending matter arising from County’s services hereunder will not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California.

B. In the event of termination, County will deliver to District copies of all documents and other work performed by County under this Agreement and upon receipt thereof, County will be paid for services performed and reimbursable expenses incurred to the date of termination.

5. Conflicts of Interest.

The District acknowledges that the County Counsel's Office is charged with responsibility to represent the County of Santa Clara and its dependent special districts, including all its boards, commissions, departments, and officers. Given the nature of the County Counsel's Office, it must preserve its ability to represent the County on matters that may arise in the future, including matters in which the County's interests are adverse to the District's interest. The County Counsel's Office is not willing to undertake representation of the District in the absence of the District's consent as set forth in this section because the County Counsel's Office must preserve the ability to represent its primary client, the County. The District's engagement of the County Counsel's Office with respect to any particular matter includes the District's consent to the County Counsel's Office's ongoing representation of its primary client, the County, in all matters, including transactions and litigation, in which the interests of the County are potentially or actually adverse to the interests of the District and notwithstanding that the County Counsel's Office may have obtained confidential information from the District, subject to the conditions below.

At the time the District engages the services of the County Counsel's Office for a particular matter, the County Counsel's Office will inform the District based on the available facts of any specific matters in which the County's interests and the District's interests are then actually or potentially adverse. Neither the County, the District, nor the County Counsel's Office intends to provide for the County Counsel's Office continuing representation of both the District and the County in matters where the interests of the District and the County are actually adverse, but the parties anticipate that any such instances are likely to be very rare. In the event that an unanticipated actual conflict of interest arises during the course of representation, the County Counsel's Office will promptly inform the District that a conflict has arisen, and will discontinue representing the District and will continue to represent the County. In such a circumstance, the County Counsel's Office shall not disclose the reasons for the conflict to the District if the County client has requested that those reasons remain confidential. The District acknowledges that in such a circumstance it is free to hire substitute counsel of its own choosing and at its own expense.

The District acknowledges that its consent to the County Counsel's ongoing representation of the County in matters where the interests of the County and District are potentially or actually adverse has significant implications that the District has considered. For example, the County Counsel's Office may take positions antagonistic to the District, or seek to compel documents or testimony from the District, in litigation brought by third parties against the County and the District where the County does not represent the District. The County Counsel's Office may learn confidential information

in the course of representing the District that may be relevant to matters in which the interests of the County and District become adverse. In that case, the County Counsel's Office will create an ethical wall between the attorney who formerly represented the District and the attorney representing the County.

By signing this Agreement, the District acknowledges that it has been advised of the potential conflicts associated with concurrent representation; that it has been advised of the County Counsel's Office's present and continuing relationship with the County; and that the District, upon requesting assistance from the County Counsel's Office on a particular matter, and having been presented with the information about potential and actual conflicts of interest as required by this section, provides its consent under Rule 1.7 of the Rules of Professional Conduct to the County Counsel's Office's ongoing representation of the County, notwithstanding any potential or actual conflict of interest between the County and the District that exists or may develop. The District waives any and all rights to disqualify the County Counsel's Office from representing the County based on a conflict of interest arising out of concurrent representation of the County and the District. And the District's consent and waiver extends to "subsequent representation," where by reason of the County's former representation of the District in a matter, the County has confidential information material to a matter in which the County's interests are adverse to the District's interests, and the County Counsel's Office no longer represents the District in any matter.

In addition, the County Counsel's Office represents other school districts and other public entities in Santa Clara County. In the event that an unanticipated actual or potential conflict of interest arises between or among two or more non-County public-entity clients represented by the County Counsel's Office during the course of representation of the District, the County Counsel's Office will immediately notify the District of the actual or potential conflict and either (1) the District will acknowledge and waive the actual or potential conflict, in which case the County Counsel's Office will erect an ethical wall between the attorney representing the District and the attorney representing the other non-County public entity client; or (2) if the District declines to waive the actual or potential conflict, the County Counsel's Office will withdraw from representing all non-County public-entity clients in that matter. If the County Counsel's Office must withdraw from representing all non-County public-entity clients in a matter, the District acknowledges that it is free to hire substitute counsel of its own choosing and at its own expense.

6. Insurance.

Each party is self-insured and during the term of this Agreement shall maintain in force (i) a commercial general liability insurance or program of self-insurance that provides limits of no less than one million dollars (\$1,000,000.00) per occurrence or two million dollars (\$2,000,000.00) per annual aggregate; (ii) a policy of workers' compensation providing statutory coverage; (iii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. The policy shall require the insurer to provide to the other party a thirty (30)

day written notice of any cancellation or reduction of such insurance or the insured party shall provide such written notice under its self-insurance plan. Each party agrees to provide the other with a certificate of insurance upon request.

7. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6, or any other statute, regulation, or rule that may otherwise affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and District agree to the following:

A. Claims Arising From Sole Acts or Omissions of County.

The County agrees to defend and indemnify District, its agents, officers, and employees (hereinafter collectively referred to as “District”) from any claim, action, or proceeding against District, arising solely out of the acts or omissions of the County in the performance of this Agreement. At its sole discretion, District may participate at its own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve the County of any obligation imposed by this Agreement. District shall notify County promptly of any claim, action, or proceeding and cooperate fully in the defense.

B. Claims Arising from the Sole Acts or Omissions of District.

District agrees to defend and indemnify the County, its agents, officers, and employees (hereinafter collectively referred to as “County”) from any claim, action, or proceeding against County, arising solely out of the acts or omissions of District in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve District of any obligation imposed by this Agreement. County shall notify District promptly of any claim, action, or proceeding and cooperate fully in the defense.

C. Claims Arising From Concurrent Acts or Omissions.

County agrees to defend itself and the District agrees to defend itself, from any claim, action, or proceeding arising out of the concurrent action or omissions of County and District. In such cases, County and District agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in section E below.

D. Joint Defense.

Notwithstanding paragraph C above, in any case where County and District agree in writing to a joint defense, County and District may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of District and County. Joint defense counsel shall be selected by mutual agreement of the

County and District. County and District agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in section E below. County and District further agree that neither party may bind the other to a settlement agreement without the written consent of both County and District.

E. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and District may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.

8. Notices.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To District: Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037
Attn: Superintendent

To the County: Office of the County Counsel
County of Santa Clara
70 West Hedding Street, Ninth Floor
San Jose, CA 95110
Attn: Rob Coelho, Assistant County Counsel

9. Governing Law, Venue.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement will be in the County of Santa Clara.

10. Relationship of Parties; Independent Contractor.

County will perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of District. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be, in a relationship of joint venture, partnership, or employer-employee. Neither party has the authority to make any statements, representations, or commitments of any kind on behalf of the other party, or

to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein.

11. Amendments.

This Agreement may be amended only by an instrument signed by the parties.

12. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

13. Contract Execution.

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

14. Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

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15. Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

IN WITNESS WHEREOF, County and District have executed this Agreement as of the date above written.

MORGAN HILL UNIFIED SCHOOL
DISTRICT

COUNTY OF SANTA CLARA

DR. CARMEN GARCIA
Superintendent

Date: _____

JAMES R. WILLIAMS
County Counsel

Date: _____

JEFFREY V. SMITH
County Executive

Approved as to Form and Legality:

LAURA S. TRICE
Deputy County Counsel