



PROFESSIONAL SERVICES AGREEMENT

No. _____

This Professional Services Agreement ("Agreement") is dated for convenience June 14, 2018 and is entered into agreement between Fagen Friedman & Fulfroost LLC (hereinafter "Contractor" or "Consultant") and the Pleasanton Unified School District (hereinafter "PUSD").

RECITALS

Whereas, PUSD desires Contractor to provide professional services as detailed in Contractor's response to PUSD's 2015-16.12 Legal Services (hereinafter "RFP"), and

Whereas, Contractor represents itself as able and, for a consideration, willing to perform the services outlined in Contractor's response to PUSD's RFP 2015-16.11, W-9 Form, Contractor's Disclosure Form Regarding PUSD Officials, and Other General Conditions to Professional Services Agreement, (collectively constituting the "Agreement").

Now, therefore, the parties enter into this Agreement for Contractor to provide professional services to PUSD as detailed herein. This Agreement attaches and incorporates by reference as though fully set forth herein the following documents: PUSD RFP 2015-16.12

A. TERM; EFFECTIVE DATE

This Agreement shall become effective July 1, 2018.

B. SERVICES CONTRACTOR AGREES TO PERFORM

Contractor agrees to perform the services provided for in Contractor's response to PUSD's RFP 2015-16.12.

C. COMPENSATION

The breakdown of costs and payment schedule associated with this Agreement are detailed in the Professional Rate Schedule attached to this document. Contractor shall furnish invoices in a form acceptable to PUSD which shall include the full name of the individual employed by PUSD who requested the service shown on the invoice. All amounts paid by PUSD to the Contractor shall be subject to audit by PUSD. Upon receipt of an acceptable invoice, payment shall be made in a reasonable time upon approval by PUSD's Deputy Superintendent of Business Services, in his or her sole discretion that the services have been rendered satisfactorily, and in a professional and timely manner in accordance with this Agreement. If PUSD and Contractor mutually agree that the scope of work described herein is increased, the Agreement may also be increased provided that there is a prior written modification to the Agreement. It shall be the responsibility of the Contractor to ensure that the total approved amount of the Agreement is not exceeded. Any work performed in excess of said amount shall not be compensated. **In no event shall PUSD be liable for interest or late charges for late payments.**

D. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered, as follows:

NOTICE TO PUSD CONTRACT OFFICE:

Pleasanton Unified School District
Purchasing Department
4750 1st Street
Pleasanton, CA 94566
Attn: Ellen Rebosura
Ph: 925.426.4335 Fax: 925.462.6065
Email: erebosura@pleasantonusd.net

NOTICE TO THE CONTRACTOR:

CONTRACTOR	Fagen Friedman & Fulfrost LLP
CONTACT PERSON NAME	Namita S. Brown
STREET ADDRESS	70 Washington Street, Suite 205
CITY, STATE, ZIP	Oakland, CA 94607
TELEPHONE/FAX	510.550.5200 (O); 510. 550.8211 (F)
EMAIL ADDRESS	nbrown@f3law.com

Appendix A

Calculation of Charges

Total Cost of the Agreement (Not to Exceed Amount) shall be \$ 250,000.00. COMPENSATION TO CONTRACTOR SHALL NOT EXCEED THE AMOUNT AUTHORIZED BY THIS AGREEMENT.

The hourly rate breakdown is as shown in the Contractor's response to the RFP.

Rate increases or changes, must have prior written approval from PUSD's Deputy Superintendent of Business Services.

NOTE: All contractual agreements to exceed \$45,000 shall require prior approval of the PUSD Board of Trustees (BP 3312).

**Pleasanton Unified School District
Contractor's Disclosure Form Regarding PUSD Officials**

To be completed by Contractor:

Name of Contractor: Fagen Friedman & Fulfrost LLP	TO PROVIDE PROFESSIONAL SERVICES
Services to be performed under the Agreement:	
Schools/Locations where services will be performed:	
Total amount to be paid by PUSD Under this Agreement not to exceed:	COMPENSATION SHALL NOT EXCEED AMOUNT AUTHORIZED IN THIS AGREEMENT.
Term of Agreement:	FY 2018-19

Are any of Contractor's employees (or owners) **ALSO** current PUSD employees/Board members, or former PUSD employees/Board members within the last year? (Check "Yes" or "No" as applicable.)

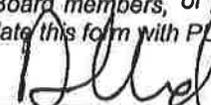
NO. None of Contractor's employees (or owners) are **ALSO** current PUSD employees/Board members, or former PUSD employees/Board members within the last year.

YES. Contractor's employees (or owners) listed in the table below are **ALSO** current PUSD employees/Board members, or former PUSD employees/Board members within the last year. (Complete the table below. The list may be continued on an additional page as needed.)

NAME of current PUSD employee/Board member, or former PUSD employee/Board member within the last year, who is ALSO Contractor's employee (or owner):	JOB TITLE(S) AT PUSD of current PUSD employee/Board member, or former PUSD employee/Board member within the last year, who is ALSO Contractor's employee (or owner):	DATE on which individual left PUSD employment/Board. Or, if the individual is currently an PUSD employee/Board member, write "current."	If individual is a current PUSD employee/Board member, how is he/she to be paid? (i.e., through PUSD Human Resources or Contractor plans to pay directly, etc.)

Certification by Contractor:

On behalf of Contractor, I hereby certify that, to Contractor's knowledge, the information provided in this form is true, accurate, and complete. I agree that during the term of this Agreement, if Contractor learns of information that differs from that provided above, including but not limited to the hiring of new personnel who are current PUSD employees or Board members, or former PUSD employees or Board members within the last year. Contractor will promptly update this form with PUSD.


Contractor's Signature

6/21/18
DATE


Print Name of Signatory

OTHER GENERAL CONDITIONS TO PROFESSIONAL SERVICES AGREEMENT

1. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of PUSD, and approval and appropriation of funds for this Agreement. Charges will accrue only after prior written authorization is provided by the authorized representative of PUSD and proper execution of this Agreement by the parties.
- b. The amount of PUSD's obligation hereunder shall not at any time exceed the amount herein stated.
- c. PUSD has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.
- d. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.
- e. This section controls against any and all other provisions of this Agreement.

2. DISALLOWANCE

- a. If Contractor claims or receives payment from PUSD for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to PUSD upon PUSD's request. At its option, PUSD may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.
- b. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal or state programs. Contractor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

3. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a consultant, who submits a false claim, shall be liable to PUSD for three times the amount of damages which PUSD sustains because of the false claim. A person who commits a false claim act shall also be liable to PUSD for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to PUSD for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to PUSD if the person:

- a. knowingly presents or causes to be presented to an officer or employee of PUSD, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by PUSD;
- c. conspires to defraud PUSD by getting a false claim allowed or paid by PUSD;
- d. has possession, custody, or control of public property or money used or to be used by PUSD and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- e. is authorized to make or deliver a document certifying receipt of property used or to be used by PUSD and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to PUSD; or
- h. is a beneficiary of an inadvertent submission of a false claim to PUSD, subsequently discovers the falsity of the claim, and fails to disclose the false claim to PUSD within a reasonable time after discovery of the false claim.

4. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by PUSD and in such case must be remedied or replaced by Contractor without delay at no additional cost to PUSD.

5. QUALIFIED PERSONNEL

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with PUSD's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at PUSD's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project schedule specified in this Agreement.

6. RESPONSIBILITY FOR EQUIPMENT

PUSD shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by PUSD.

7. TAXES

Contractor shall pay all taxes levied in connection with this Agreement, or the services delivered pursuant hereto.

8. INDEPENDENT CONTRACTOR

- a. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of PUSD. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between PUSD and Contractor or its agents and employees.
- b. Any terms in this Agreement referring to direction from PUSD shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as the means by which such a result is obtained. PUSD does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between PUSD and Contractor or its agents and employees.
- c. If any governmental authority should, nevertheless, determine that Contractor is an employee, then PUSD's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement under Section C., "Compensation". Contractor shall refund any amounts necessary to effect such reduction.
- d. Contractor shall also complete and file with PUSD the attached W-9 form.

9. INSURANCE

- a. Without in anyway limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:
 - 1) Commercial General Liability Insurance with limits not less than \$1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage (including coverage for claims of sexual abuse and molestation).
 - 2) Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 (one million dollars) each accident.
 - 3) Professional Liability (E & O) Insurance with limits not less than \$1,000,000.00 (one million dollars) each occurrence and in the aggregate. Coverage must at a minimum apply to negligent Errors and Omissions arising out of professional services, performed under the contract, with any deductible not to exceed \$250,000 each claim.
- b. Commercial General Liability policy must provide the following:
 - 1) **Name as Additional Insured the Pleasanton Unified School District, its Board, officers and employees.**
 - 2) That such policy is primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.
- c. If any policies are written on a claims-made form, Consultant agrees to maintain such insurance continuously in effect for three years following completion of this Agreement or extend the period for reporting claims for three years following the completion of this Agreement, such that occurrences which take place during the Agreement period shall be insured for three years following completion of the Agreement.

- d. The Consultant shall provide PUSD with the appropriate certificate(s) of insurance prior to commencing performance. The Consultant shall also be obligated to notify PUSD in writing at least 30 (thirty) days in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Agreement. Consultant also understands and agrees that PUSD may withhold payment for services performed for any violations of the Insurance provisions of this Agreement.

10. INDEMNIFICATION

- a. With respect to professional services to be provided under this Agreement, the Consultant shall indemnify and hold harmless PUSD, its Board, agents, and employees from and against any and all actions, claims, damages and losses, including attorney's fees that may arise out of or in any way result from the negligent or wrongful acts, errors, or omissions of Consultant.
- b. With respect to claims arising under Consultant's general liability coverage, the Consultant shall indemnify and hold harmless PUSD, its agents, and employees from and against any actions, claims, damages or loss, including attorney's fees that may arise out of or in any way result from Consultant's activities in the performance of its services under this Agreement.
- c. The Consultant will not, and will not permit its officers, employees and/or agents, to infringe on any patent right, copyright, trade secret or any other proprietary right or trademark of PUSD in the performance of services under this Agreement. The Consultant shall not disclose to third parties any details of its services for PUSD or the actions, inactions or decisions of the Agency, other than disclosure to third parties of the fact that Consultant represented PUSD in the particular publicly known transactions on which the Consultant works on PUSD's, and to describe in general terms only, the Consultant's role, the services Consultant performed, and the nature of such transactions. Such disclosures may be made to current or prospective clients of the Consultant or to others, and may consist of announcements and advertisements placed at the Consultant's own expense in legal, business, financial and other periodicals and publications.

11. LIABILITY OF PUSD

PUSD'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED FOR IN SECTION C ("COMPENSATION") OF THIS AGREEMENT. PUSD SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS IN CONNECTION WITH THIS AGREEMENT.

12. DEFAULT; REMEDIES

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
 - 1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement.
 - 2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement of any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property, (E) takes action for the purpose of any of the foregoing, or (F) is the subject of any order of a court or government authority related to the Federal Bankruptcy Act.
- b. On and after any Event of Default, PUSD shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement for cause or to seek specific performance of all or any part of this Agreement. In addition, PUSD shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to PUSD on demand all costs and expenses incurred by PUSD in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. PUSD shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between PUSD and Contractor all damages, losses, costs, or expenses incurred by PUSD as a result of such Event of Default due from Contractor pursuant to the terms of this Agreement.
- c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

13. **TERMINATION**

- a. It is expressly understood and agreed that in the event the Consultant fails to perform its obligations under this Agreement, this Agreement may be terminated for cause by PUSD and all the Consultant's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice to Consultant, and no work will be undertaken by Consultant after receipt of the notice. In the event this Agreement is terminated by PUSD pursuant to this paragraph; the Consultant shall be paid for services performed up to the date of termination.
- b. It is further understood and agreed that PUSD may terminate this Agreement for PUSD's convenience and without cause at any time by giving the Consultant thirty (30) days written notice of such termination. In such an instance, the Consultant shall be entitled to compensation for services performed up to the effective date of termination.
- c. Upon receipt of written notice that this Agreement is terminated, the Consultant will submit an invoice to PUSD for an amount that represents the value of services actually performed up to the date of termination for which the Consultant has not previously been compensated as provided for herein. Upon approval and payment of this invoice by PUSD, PUSD shall be under no further obligation to the Consultant, monetarily or otherwise.

14. **CONFLICT OF INTEREST**

- a. Conflict of Interest Standards. The following is a brief overview of conflict of interest laws and policies. Contractor is responsible to know, and comply with, the full requirements of the law.
 - 1) Under the California Political Reform Act (CPRA), codified in part as Government Code section 1090 and sequential, and section 87100 and sequential: No public official shall make, participate in making, or in any way attempt to use his or her official position, to influence a contract on behalf of the public agency when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.
 - 2) Government Code section 1090 defines "making" a contract broadly to include actions that are preliminary or preparatory to the selection of a contractor such as but not limited to: involvement in the reasoning, planning, and/or drafting of scopes of work, making recommendations, soliciting bids and requests for proposals, and/or participating in preliminary discussions or negotiations. (Cal. Govt. Code § 1090)
 - 3) State law limits the amount of gifts that may be received by public officials from a single source during a calendar year. In 2016, the gift limit is \$460 per source per calendar year. (See e.g. Cal. Govt Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)
 - 4) State law prohibits, with limited exceptions, certain former local public officials from appearing before their former public agency for the purpose of influencing a governmental decision for 12 months from the date the former employee left that public agency. (Cal. Govt. Code § 87406.3)
 - 5) State law bars a public agency employee from making governmental decisions regarding an organization which is engaged in employment negotiations with that public agency employee. (Cal. Govt. Code § 87407)
 - 6) Contractors and their representatives may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Contractors/representatives must submit a disclosure filing called a Statement of Economic Interests or "Form 700." (Cal. Govt. Code §§ 81000-91015; PUSD Board Rules and Procedures 9270, "Conflict of Interest Code")
- b. Obligations of Contractor. It is the obligation of the Contractor, as well as any subcontractors, to determine whether or not participation in a contract may constitute a conflict of interest. While PUSD staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of PUSD. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify PUSD immediately if it finds that a potential conflict may exist.
- c. Consultation with Counsel. PUSD strongly advises any Contractor, and any proposing/ bidding firm, to consult with its legal counsel to determine whether a conflict of interest may exist. It is the responsibility of a Contractor, or a proposing/bidding firm, to make that determination.
- d. Consequences of a Violation. Any contract made in violation of Section 1090 is void and cannot be enforced. When Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. The government agency can seek repayment from the Contractor

of any amounts already paid, and refer the matter to appropriate authorities for prosecution. Additional consequences may also apply.

- e. **Disclosure Requirement.** Contractor will submit to PUSD a list of all of Contractor's employees (including owners) who are also current PUSD Board members or employees, or former PUSD Board members or employees in the last year. Contractor will submit the attached "Contractor's Disclosure Form Regarding PUSD Officials." Contractor will update this form with PUSD, as needed, during the term of this Agreement. Exception: Public agencies that provide contract services to PUSD are not subject to this disclosure requirement.
 - f. **Compliance with Gift Limits.** Contractor will abide by legal gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to PUSD officials, and in order not to place PUSD officials in conflict with any specific gift restrictions: (1) No Contractor or representative thereof shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any PUSD contracting or procurement official at any time. (2) No Contractor or representative thereof shall offer or give, directly or indirectly, any gifts in a calendar year to a PUSD official which exceed the allowable gift limit. (See e.g. Cal. Govt Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)
15. **PROPRIETARY INFORMATION OF PUSD**
- a. Contractor understands and agrees that, in connection with this Agreement, the Contractor may have access to proprietary or confidential information which may be owned or controlled by PUSD and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to PUSD, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by PUSD to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary or confidential information.
 - b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code sections 49073 and sequential. Contractor shall only access confidential student information pursuant to prior written parental consent, legitimate educational interest in performing duties on behalf of PUSD under this Agreement, or other provisions of federal and state law permitting access to confidential student information. **Contractor shall not use confidential student data for any purposes other than providing services to PUSD pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of PUSD and any such re-disclosure shall be consistent with state and federal law.**
 - c. The confidentiality provisions of this Section shall survive the termination or expiration of this Agreement.
16. **OWNERSHIP OF THE RESULTS**
- Any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer data files and media or other documents prepared by Contractor in connection with services to be performed under this Agreement, shall be the property of and be promptly transmitted to PUSD. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities, but only to the extent that such retention and use complies with Section 15 of this Agreement ("Proprietary Information of PUSD").
17. **EMAIL COMMUNICATIONS/SHARED DOCUMENTS**
- PUSD may communicate and transmit documents using email. In addition, shared documents may be hosted on servers located in a facility other than PUSD's offices or school sites ("In the cloud"). The District uses reasonable precautions to keep electronic information secure and confidential; however, there may be risks to communicating and storing information in this manner. Contractor consents to allow email communication as well as having data stored "in the cloud."
18. **AUDIT AND INSPECTION OF RECORDS**
- The Consultant agrees to maintain and make available to PUSD accurate accounting and other records relative to its obligations under this Agreement. The Consultant will participate promptly and cooperatively in any audits conducted by PUSD or its nominee, and permit PUSD or a representative to audit, examine and make copies from such books and records, and to perform audits related to all matters covered by this

Agreement, whether funded in whole or in part under this Agreement. The Consultant shall maintain such data and records in an accessible location and condition for a period of not less than three years after a final payment under this Agreement or until after final audit has been completed, whichever is later.

19. SUBCONTRACTING

The Consultant is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement unless such subcontracting is agreed to in writing and executed in the same manner as this Agreement. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

20. ASSIGNMENT

It is understood and agreed that the services to be performed by the Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of PUSD.

21. NON DISCRIMINATION

Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender, AIDS/ARC/HIV status, or disability, in its performance under this Agreement.

22. WAIVER

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

23. MODIFICATION OF AGREEMENT

This Agreement may only be modified or amended by written instrument executed and approved in the same manner as this Agreement.

24. DISPUTE RESOLUTION

- a. Prior to any action or resort to any legal remedy, PUSD and Contractor agree to exercise reasonable efforts, and to negotiate in good faith, to amicably resolve any dispute that may arise concerning the performance by either party of their obligations under this Agreement. If PUSD's and Contractor's project managers cannot resolve disputes through such negotiations, then the Parties' project managers will escalate the dispute to their respective executives who shall have authority to resolve the controversy and who are at a higher level of management than the project managers.
- b. In such event, either PUSD or Contractor shall give the other party written notice of any dispute not resolved by good faith negotiations between the Parties' respective project managers. Within fifteen (15) days after delivery of such initial notice, the receiving party shall submit to the other a written response. Both the initial notice, and the response, shall include (i) a statement of that party's position, (ii) a summary of arguments supporting that position, and (iii) the name and title of the executive who will represent that party and of any other person who will accompany the executive.
- c. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other shall be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- d. If the executives cannot resolve the dispute to the satisfaction of both Parties, then PUSD and Contractor may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation or non-binding arbitration. If the parties do not mutually agree to mediation or non-binding arbitration, or mutually select a mediator or arbitrator for the dispute, or such efforts do not resolve the dispute, then either party may pursue any remedy available under California law.

25. **COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**
Contractor acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.
26. **COMPLIANCE WITH LAWS**
Contractor shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time.
27. **GOVERNING LAW; VENUE**
This Agreement shall be governed by the laws of the State of California. The venue for all litigation relative to this Agreement shall be Alameda County.
28. **SECTION HEADINGS**
The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.
29. **ENTIRE AGREEMENT**
The entire Agreement between the parties is included herein and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed herein in writing, and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.
30. **EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS**
a. Original copies of this Agreement shall be executed by the respective party's authorized signatory(ies).
b. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.
31. **SEVERABILITY**
If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

(Continued on the next page.)

32. SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF the parties hereto have executed this Agreement on _____, 2018

For Fayen Friedman-Fulbost For PLEASANTON UNIFIED SCHOOL DISTRICT

APPROVED:

By: [Signature]
Authorized Signature

APPROVED:

BY: _____
David Haglund, Ed. D.
Superintendent

All contractual agreements to exceed \$45,000 shall require prior approval of the Pleasanton Unified School District Board of Trustees (BP 3312).

Board Approval Date: _____
**if amount exceeds \$45,000*



PROFESSIONAL RATE SCHEDULE

**Pleasanton Unified School District
July 1, 2018 through June 30, 2019**

1. HOURLY PROFESSIONAL RATES

Client agrees to pay Attorney by the following standard hourly rate:

Associate	\$220 - \$250 per hour
Partner	\$265 - \$300 per hour
Of-Counsel	\$300 per hour
Paralegal/Law Clerk	\$140 - \$200 per hour
Paralegal/Law Clerk <i>(Bar Admitted Outside CA)</i>	\$220 per hour
Education Consultant	\$230 per hour
Communication Services Consultant	\$250 per hour

Travel time shall be charged only from the attorney's nearest office to the destination and shall be prorated if the assigned attorney travels for two or more clients on the same trip. If Client requests a specific attorney, Client agrees to pay for all travel time of that specific attorney in connection with the matter.

2. ON-SITE LEGAL SERVICES

At Client's discretion and by prior arrangement of Client and Attorney, Attorney may provide regularly scheduled on-site legal services ("Office Hours") to address legal issues that may arise in Client's day-to-day operations. Office Hours, which include time Attorney spends at Client's facility as well as travel time, shall be provided at a reduced hourly rate of 90% of the Attorney's standard hourly rate.

3. COSTS AND EXPENSES

In office Photocopying	No Charge
Facsimile Charges	No Charge
Postage	No Charge
On-line Legal Research Subscriptions	No Charge
Administrative Overhead	No Charge
Mileage	IRS Standard Rate

Other costs, such as messenger, meals, and lodging shall be charged on an actual and necessary basis.