



Fox Rothschild LLP
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May 6, 2020

VIA EMAIL

Dr. Juan R. Baughn
Superintendent
Chester Upland School District
232 West Ninth Street
Chester, PA 19013

Re: Fox Rothschild LLP Engagement Letter for Solicitor Services

Dear Dr. Baughn:

This letter will confirm that the Chester Upland School District (“Client”) has retained Fox Rothschild LLP (“Firm”) to represent Client in connection with the matters described below. The Engagement Letter (“Letter”), along with the attached Standard Terms of Engagement (“Standard Terms”), comprise the Engagement Agreement (“Agreement”) between Client and the Firm and explain the terms under which the Firm will provide legal services to Client in this matter. (The Standard Terms are attached hereto and incorporated by reference as Exhibit 1.) In the event of a discrepancy between the Standard Terms and the Letter, the provisions set forth in the Letter will prevail.

Scope of Work. Client has engaged the Firm to provide the following services (“Engagement”):

1. Such Solicitor services shall include but not be limited to the following services:

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington

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**BASE SERVICES: SUBJECT TO A BLENDED¹ HOURLY RATE OF
\$250.00 PER HOUR**

- a. Attendance at Board meetings and executive sessions on an as-needed basis. It is understood that during the Term of Engagement that the Firm's WebEx virtual attendance system could be utilized for the attendance at executive sessions and Board meetings.
- b. General personnel issues.
- c. Review and/or revisions of routine policies of the Board or proposed administrative regulations of the Board. This would not include, however, specialized policies, such as sexual harassment, Family and Medical Leave Act, HIPAA, Internet, acceptable use policies, data destruction policies, and any procedures and/or implementation related to the same.
- d. Preparation of routine resolutions or wording of resolutions.
- e. Attendance at the county assessment hearings for commercial appeals as directed by the Business Office of Client subject to guidelines developed by Client and approved by the Firm.
- f. Handling of appeals from determinations of the county assessment office.
- g. Personnel items involving demotions, seniority calculations, transfer of entities, investigations regarding violation of school policies, any investigations regarding management level employees as directed by Client, or other similar personnel actions.
- h. Appointments and/or contracts relating to administrators.
- i. Responses to grievances pursuant to a collective bargaining agreement and handling of arbitrations pursuant to a collective bargaining agreement.

¹ This rate is charged regardless of the individual performing the service.

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- j. Student discipline issues, special education hearings, advice relating to special education matters when the student is represented by an advocate or an attorney, or subsequent litigation (subject to insurance carrier requirements).
- k. Student and/or employee subpoenas and/or requests for production of documents.
- l. Responses to Right to Know requests pursuant to Pennsylvania law.
- m. Seeking exceptions or court petitions relating to any referendum requirements.
- n. Non-routine situations that would involve matters in which a case or controversy has arisen or may arise by virtue of threatened litigation or litigation that is imminent or likely, circumstances in which Client is contacted by an attorney representing a specific client, actual litigation, hearing requests, citizen complaints, OCR investigations, defense of complaints filed in court or before agencies, or hearings before the Board itself.
- o. Negotiation with vendors or other parties concerning non-routine contracts.
- p. Student residency disputes.
- q. Employee discipline matters.
- r. Collective bargaining where the Firm represents Client as its negotiator, as well as the handling of unfair labor practices, grievances, labor arbitrations, fact findings, non-binding and/or binding arbitrations, and so on.
- s. Establishing or terminating special entities, such as authorities, vocational-technical schools, foundations, joint school or departments, consortia, charter schools, or other similarly formed related entities.
- t. Special court actions required pursuant to the School Code or other law, including Receivership issues.
- u. Responding to Auditor General investigations or District Attorney investigations.
- v. Specialized Act 1 of 2006 advice.
- w. Specialized advice regarding Act 32 of 2008 (tax collection advice).
- x. Issues relating to delinquent tax collection.

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- y. Labor and related negotiations services on behalf of Client.
- z. Other labor, employment, and general representation services necessitated as the result of being appointed as Solicitor for Client as may be required from time to time.

**SPECIALTY RATES: SUBJECT TO A BLENDED² HOURLY RATE OF
\$300.00 PER HOUR**

- a. Land development and real estate issues.
- b. Construction contracts, litigation, and construction-related issues.
- c. HIPAA-related claims or requirements.
- d. Court proceedings for the sale or possession of real estate.
- e. Condemnation proceedings.
- f. Acceptable use policies, standard software licensing agreements that are not addressed in other sections of this Agreement, copyright issues, HIPAA issues, tax and benefits-related issues, negotiation of specialty contracts with third party administrators, insurance companies, brokers, pharmacy benefit providers, and health benefit providers, or other specialty items that are not included in the BASE SERVICES.
- g. Benefits advice relating to labor negotiations services in accordance with Section 125 of the Internal Revenue Code, 403(b), 457 plans, the Internal Revenue Code, and other benefits advice in conjunction with the Patient Protection Act and its implications on collective bargaining.

² This rate is charged regardless of the individual performing the service.



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SPECIALLY NEGOTIATED RATES

- a. School financing, including but not limited to bond issues, collateral exchanges, tax revenue anticipation notes, swap agreements, and loans. These matters will usually be handled on a fixed fee basis, to be determined by the Firm and Client, based upon the size and complexity of the issue.
- b. Matters relating to tax increment financing work, which will be billed at the rate of \$300.00 per hour, unless such rates are subject to reimbursement of a non-insured third party (i.e., developer), when the rates will be based upon the customary hourly rates charged by the Firm to non-school clients.
- c. Specialized contracts calling for a tax opinion from the Firm (i.e., financing and copier leases), guaranteed energy savings contracts, preparation of specialized agreements or plans, such as Section 125 plans, Section 457 plans, Section 401(a) plans, Section 403(b) plans, Health Reimbursement Accounts, benefits-related agreements, COBRA, HIPAA, and PSERS advice, condemnation and construction litigation, transactional aspects of major building construction projects, including but not limited to alterations of school buildings involving projects instituted on or after the date of this Agreement, tax opinions required pursuant to IRS Circular 230, intellectual property advice or agreements, immigration advice or proceedings, or any advice or proceedings relating to the formation or dissolution of foundations formed pursuant to Section 501(c)(3) of the Internal Revenue Code, matters involving the sale or purchase of school property and matters involving the transactional aspects of major building construction projects, which would include but not be limited to the alterations or renovations of school building projects, specification review, architectural contracts, or engineering projects for projects instituted on or after the date of this Agreement will be handled at a blended rate of \$300.00 per hour.
- d. Audit inquiry responses: A flat fee of \$750.00 for the original audit inquiry request and \$500.00 per update will be charged.
- e. Litigation instituted on or after the date of this Agreement that will be unique or non-customary litigation on the part of Client. An example of this exception will include complex securities litigation, bankruptcy litigation, litigation involving investment of bond or other investment proceeds of Client, any complex litigation not described in other sections of this Agreement. Such litigation will be charged based upon the customary hourly rates charged by the Firm to non-retainer, non-school clients, less 20%.

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- f. Matters covered by insurance. Notwithstanding the rates set forth in this Agreement, the Firm's handling of insurance matters will be subject to the insurance company representation guidelines and rates. Where an insurance company is involved, we may ask that you pay our monthly bills and then we will submit claims for reimbursement on your behalf to the insurance company. In all cases in which insurance coverage may be available, the ultimate responsibility for payment of our charges will remain with Client.

GOVERNANCE ADVICE

- a. In addition to the foregoing, at the Base Services rate, the District will develop governance training and governance recommendations to address the complex interplay between the Receiver, the School Superintendent and Administration, Governing Board, Solicitor, and other key players in the operation of the District, including but not limited to the Court of Common Pleas of Delaware County.
- b. On a somewhat related note and as a follow-up to our discussions, I am attaching a copy of a presentation I recently made to LERA in Harrisburg regarding the representation of fiscally distressed school districts.

Identity of Client. The Firm's only client in the Engagement is the party identified as Client in the first paragraph of this Letter. The Engagement is not an agreement to represent any of Client's affiliates, subsidiaries, parents or related individuals, officers, directors, partners, members, shareholders, employees, independent contractors or agents (collectively, "Affiliates") unless the Firm has specifically agreed to do so in writing. Client agrees that the Firm's representation of Client in the Engagement does not give rise to an attorney-client relationship between the Firm and any of Client's Affiliates. Further, the Firm's representation of Client in the Engagement will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of Client's Affiliates.

Client has agreed that Dr. Baughn will be the contact person ("Contact") for Client throughout the duration of the Engagement and that all Invoices should be sent to Contact for processing and payment.

Fees and Billing. The Firm's time will be recorded in increments of rounded tenths of an hour, with one-tenth (0.1) being the minimum for any activity.

The hourly rates specified in the Letter shall prevail over the range of fees in the Standard Terms as specifically set forth in the Letter.

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The Firm reserves the right to revise the staffing of the Engagement as it deems efficient. If, at any time, Client has any questions concerning the staffing of the Engagement, please contact me immediately. The Firm's billing rates are adjusted from time to time, generally once a year, usually in June, to reflect then current levels of legal experience, changes in overhead costs, market conditions or other appropriate considerations.

The Firm typically incurs costs in connection with the Engagement. These costs include postage, delivery charges, facsimile and photocopy charges, computerized legal research and related expenses, travel expenses including parking, mileage, meals and hotel costs, and use of outside service providers including printers or experts. In litigation matters, such expenses may also include filing fees, deposition costs, process servers, e-discovery costs and technician time, court reporters and witness fees. Client agrees to reimburse the Firm for any costs and expenses incurred in the course of the Engagement. If the Firm anticipates that substantial expenses will be incurred on Client's behalf, the Firm will advise Client and the Firm may request that Client pay these expenses directly.

The Firm will issue regular Invoices that detail the fees and costs incurred in the Engagement ("Invoices"), usually on a monthly basis. The time charged will include all time the Firm devotes to the Engagement.

Payment is due within thirty (30) days from the date of Invoices. Unpaid Invoices will accrue interest at the maximum rate permitted by applicable laws. If an Invoice is not timely paid, the Firm may withdraw from the Engagement. If necessary, the Firm shall file a motion with the court to withdraw as counsel in the Engagement and Client shall not oppose said motion.

Although the Firm attempts to capture all fees charged and disbursements made on Client's behalf through the closing date set forth in each Invoice, there may be fees or charges for a particular time period that will not appear on certain Invoices. Any such fees or charges will appear on subsequent Invoices.

No individual except the Firmwide Managing Partner, or his/her designee, has the authority to modify the Invoices submitted to Client.

No Retainer. No retainer is requested at this time. However, the Firm reserves the right to request retainers in the future.

Future Representation. If Client asks the Firm to take on an additional assignment in the future, Client and the Firm will reach a separate understanding covering that additional assignment, which understanding will be reflected in a separate writing, which may include emails.



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Encryption of Electronic Email. We take data privacy very seriously. The Firm will first attempt to transmit all email to Client by means of the Transport Layer Security (TLS) protocol, which encrypts communications between Client's email server and the Firm's email server. Most major email providers support the TLS protocol, and it is considered a best practice in the security industry. If Client's email provider or server is not configured to receive communications sent with the TLS protocol, the Firm automatically will resend those communications without using the TLS protocol and without any encryption during transmission. The Firm strongly recommends that Client send and receive email containing attorney-client privileged information, Personally Identifiable Information or Protected Health Information only by means of the TLS protocol. If Client is unable to receive email by means of the TLS protocol, please notify the undersigned and the Firm will use a third party service that will allow Client to retrieve its emails in a secure manner.

Conclusion. If Client has any questions about the Agreement, please contact me as soon as possible. Client may consult with separate counsel regarding this Agreement.

Please acknowledge Client's acceptance to the terms in the Agreement and receipt of the Standard Terms by signing one copy of the Letter and returning the signed copy to me at your earliest convenience. This Agreement will take effect on the date of Client's signature or when the Firm first performs legal services for Client, whichever is earlier.

We appreciate the opportunity and privilege to represent Client in the Engagement.

Very truly yours,

Jeffrey T. Sultanik

JTS:slw
Enclosure

cc: Marc B. Davis, Esquire (via email)
Brian E. Subers, Esquire (via email)
Mark W. Fitzgerald, Esquire (via email)