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STUART SIMKE (RET.)

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RICHARD V. GODINO (1929-2001)  
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July 12, 2019

OUR FILE NO. 1256.01

**VIA EMAIL**

Mr. Tim Holcomb  
Chief Operating Officer  
Newport-Mesa Unified School District  
2985 Bear Street  
Costa Mesa, California 92626  
tholcomb@nmusd.us

Re: Legal Service for Newport-Mesa Unified School District

Dear Mr. Holcomb:

Bergman Dacey Goldsmith ("Firm") submits this letter for the Board of Education's consideration regarding our proposal for legal services ("Proposal") to continue to represent the Newport-Mesa Unified School District ("District"). This letter confirms those terms and conditions of our Proposal and shall serve as the retainer agreement ("Agreement"). The terms and conditions of the Proposal are incorporated by reference herein. Except for changes in our fees and costs, as described below, the Agreement may not be changed or modified except by a subsequent document signed by both of us.

In consideration of the promises and the mutual agreements hereinafter contained, the District and Firm agree as follows:

The District appoints Firm to represent, advise and counsel the District for such services as the District may designate for the period July 1, 2019 through and including June 30, 2020.

**SCOPE OF REPRESENTATION**

Firm agrees to provide the following professional services upon request:

1. Render legal advice to the District's Governing Board and the Superintendent;
2. Prepare periodic reviews of relevant court decisions, legislation and other legal issues;
3. Assist in the preparation and drafting of District contracts;
4. Assist in the preparation and conduct of District claims, claims negotiations, mediation, arbitration and litigation;
5. Attend Board meetings upon request; and
6. Perform such other duties as may be assigned by the District in meeting its obligations under the law.

**FEEES FOR SERVICES RENDERED AND COSTS ADVANCED**

The Firm will bill the District monthly for services rendered and costs advanced. Our fees are charged on an hourly basis, and the rates depend upon the attorney(s) or paralegal/assistant(s) working on the District's matter. The rates will be set forth as follows:

Shareholders/Of Counsel:	\$275.00/hour
Associates:	\$250.00/hour
Paralegals/Law Clerks:	\$115.00/hour
Document Management Director:	\$85.00/hour

For the District's information, time for which charges apply includes but is not limited to telephone calls, correspondence, meetings, reviewing and drafting of documents, court appearances, legal analysis and research, conferences and certain travel. The Firm records time in one-tenth (1/10) hour increments. Short telephone calls which are less than one-tenth (1/10) hour are combined under one incremental charge in an effort to be as fair as possible in keeping charges to a minimum. Any minimum time charges are subject to periodic change in the same manner provided for the basic hourly rates.

Each monthly invoice will include both fees and any costs the Firm has incurred with respect to the District's matter. These costs will include: filing fees, messenger service or attorney service, recording fees, outside copying jobs, etc. The Firm shall charge the

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District for in-house photocopying at 10 cents per page. Any out-of-pocket expenses incurred will be billed monthly. All such items are subject to periodic change in the same manner provided for the basic hourly rates.

The Firm renders monthly statements indicating the current status of all accounts, both for services rendered and for costs incurred. The amounts shown on these statements are payable within thirty (30) days after the date of the statements. All payments received by the Firm may be applied or expended as the Firm deems appropriate and shall be deemed fully earned upon receipt. If the District has questions regarding the amount or descriptions set forth on a bill, please raise them within fifteen (15) days of receipt. Time often dims memories as to details, and review of older records is time-consuming and costly. If no objection is made within fifteen (15) days, we will assume that the District has agreed to the terms of the bill.

The Firm shall assign legal personnel as the Firm determines in its discretion to be appropriate to handle the District's matter in the most efficient and cost-effective manner possible. The District acknowledges that the Firm may, from time to time and for your convenience, furnish the District with estimates of the amount of an anticipated fee that will be charged with respect to services to be performed. Such estimates are by their nature in-exact, are not guarantees, and are not binding on the Firm.

### **RETAINER AMOUNT**

No retainer amount is required.

### **DISCLAIMER**

The Firm does not guarantee the outcome or disposition of the matter(s) on which the Firm represents the District. The District agrees to pay the Firm's fees and chargeable costs regardless of any outcome unless the Firm has a specific written agreement with the District to do otherwise.

### **RIGHT TO ARBITRATION**

If any misunderstanding or disagreement arises between the District and the Firm with respect to any statement for fees or costs, which the two of us are unable to mutually resolve, the matter will be submitted to mandatory binding arbitration. Said proceedings will be governed by the rules of the State Bar of California and will take place before an arbitrator or arbitrators selected in accordance with those rules or the rules of any local Bar Association which is operating under the auspices of the State Bar or, if none, in accordance with the arbitration laws of California. The arbitrator will have discretion to order that the

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costs of arbitration, including the arbitrator's fees, and reasonable attorneys' fees, be borne by the losing party.

### **CLIENT RESPONSIBILITIES; ATTORNEYS' RIGHT TO WITHDRAW**

The District shall have the right at any time to terminate the Firm's services upon written notice to the Firm. After receiving such notice, the Firm shall immediately cease to render services provided that doing so does not prejudice the District's procedural and/or substantive rights, remedies and/or defenses in any ongoing matter. If such action is required and taken after the Firm receives such notice, the District shall pay for such services. The District's termination of services shall not, however, relieve the District of the obligation to pay the fees due for services rendered and costs incurred.

The District's responsibilities to the Firm include keeping its account current with the Firm; providing the Firm prompt, full and accurate information requested; and cooperating fully with the Firm as requested. The Firm shall have the right to withdraw from representation of any and all matters if the District fails to meet its responsibilities or if the District elects not to follow material advice which the Firm gives to the District. The Firm's right to withdraw hereunder is in addition to those rights created by statute or recognized by rules of professional conduct. In the event that the Firm decides to withdraw from representing the District, the District agrees to execute all documents necessary to complete the Firm's withdrawal.

The District agrees that if the Firm withdraws from a matter, the District will promptly execute a Substitution of Attorney at the Firm's request. Also, unless the District has fully paid its account, the Firm will have the right to retain monies in our possession for payment of any amounts due to the Firm or persons the District or the Firm retained in this matter for the District's benefit (for example, court reporters or experts). To the extent that any retainer amounts remain in the Firm's possession in excess of amounts due to the Firm or such persons, such amounts will be promptly returned to the District.

### **SEVERABLE PROVISIONS**

The provisions of this Agreement are severable, and if any one or more provisions is determined to be judicially unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provision, to the extent enforceable, in any jurisdiction, shall nevertheless be binding and enforceable.

### **ATTORNEY'S FEES**

If any action arises to enforce this Agreement, and/or by reason of any asserted breach of it, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees (without regard to any fee schedule then in effect in whatever court said action may be filed), incurred in enforcing or attempting to enforce any of the terms, covenants or conditions, including all costs and expenses, including reasonable attorney's fees, incurred before the start of the action, during the action and on any appeal. In the event either party breaches any of the terms of this Agreement, the other party shall have the right, without prejudice to such party's other rights and remedies, to seek such legal and equitable relief as a court may order.

### **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties.

Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding.

Except for changes in the fees and costs to be charged hereunder, no supplement, modification or waiver of this Agreement shall be binding unless executed in writing by both parties.

Upon the closing of District's file in this matter, BDG will inform District when the appropriate portions of the file may be picked up. If the file is not picked up by District, all documentation or writings, as defined by Evidence Code section 250, consisting of District's file will be maintained by BDG for a period of 3 years after BDG's closing of the file. Unless otherwise instructed in writing by District, such file will be destroyed 3 years after the date that the file is closed. BDG will not be required to provide notice to District before destroying such file after the 3-year period has expired.

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**EFFECTIVE DATE**

The effective date of this Agreement is July 1, 2019 through June 30, 2020, upon approval by the District's Board. The Agreement will remain effective until terminated pursuant to its terms.

Please review this Agreement carefully since it will be a binding fee agreement when signed by both of us; the District may, of course, discuss same with other counsel if the District so desires. To indicate the District's understanding of, and agreement to, the foregoing terms and conditions, please execute this Agreement (which I have signed) and return it to us for our records.

Thank you again for retaining the Firm. The Firm appreciates the confidence which the District has placed in our Firm. We look forward to the continuation of a mutually satisfactory relationship. Please feel free to call us if you have any questions.

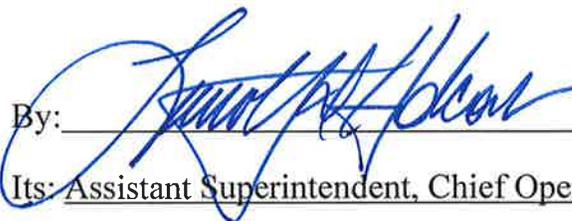
Very truly yours,

  
JOHN P. DACEY

I confirm that: (1) the District has had the opportunity to consult legal counsel concerning the contents of this Agreement; (2) that the Board has appropriately delegated to me the authority to sign this Agreement on behalf of the District; and (3) that the District has read, understands and agrees to be bound by the terms, conditions and provisions set forth above.

DATED: 8/13/19

NEWPORT-MESA UNIFIED SCHOOL DISTRICT

By:   
Its: Assistant Superintendent, Chief Operating Officer