

**AMENDMENT NO. 2 TO CONTRACT BETWEEN  
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA  
AND HOLLAND & KNIGHT, LLP FOR LEGAL SERVICES**

**THIS AMENDMENT NO. 2 TO CONTRACT** entered into this 28<sup>th</sup> day of February 2007, is made to the Agreement by and between THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA (hereinafter referred to as the “Board”), which is the governing body of the School District of Palm Beach County, Florida, and Holland & Knight, LLP (hereinafter referred to as “Legal Advisor”) approved by the Board on August 2, 2006.

1. **CONTRACT.** This Amendment No. 2 shall commence on November 1, 2006 and shall remain effective until the services as outlined in the attached Scope of Services (Exhibit A) are completed or unless otherwise terminated by the parties. The cost of the aforementioned services shall not exceed \$852,000.00. The Legal Advisor shall consult with the Chief Counsel for the School Board of Palm Beach County, Florida prior to the hiring of any experts.

2. **PROFESSIONAL SERVICES AND RESPONSIBILITIES OF THE LEGAL ADVISOR.** Legal Advisor shall serve as an independent contractor for the Board servicing in the following areas: Please see attached Exhibit “A”, Scope of Services.

3. **EVALUATION OF SERVICES.** The services provided by the Legal Advisor will be measured by the Consultant’s completing the tasks as described in Exhibit “A”.

4. **INDEPENDENT CONTRACTOR.** The parties understand and agree that the services to be provided by Legal Advisor will be performed by Jack L. McLean, Jr., Esquire, Judy Korchin, Esquire, Brett Barfield, Esquire, and Kamran Khajavi-Nouri, Esquire; that Jack L. McLean, Jr., Esquire, will be the relationship partner to the Board; and that the relationship between the Board and Legal Advisor will not be that of an employer and employee. The Board shall at all times be obligated to the Legal Advisor for payment of fees and reimbursement of expenses under the conditions outlined below.

5. **COMPENSATION.** For services performed by the Legal Advisor as outlined in this Contract, the Board agrees to pay the Legal Advisor an attorney hourly rate of \$349.00. Any hourly fee in excess of the \$349.00 hourly rate must have prior Board approval. The hourly rate for paraprofessionals will not exceed \$159.00. This Contract shall only provide for the reimbursement of reasonable travel expenses if expressly authorized in advance by the Board,

and only to the extent that the cumulative total of hourly fees and travel expenses do not exceed \$10,000.00.

a. The Legal Advisor will be paid for services and expenses on a monthly basis.

b. Because the Legal Advisor is not Board's employee, Legal Advisor is responsible for paying all required State and Federal taxes. More specifically, Board will not withhold FICA (Social Security) from Legal Advisor's payments; Board will not make State or Federal unemployment insurance contributions on behalf of Legal Advisor; Board will not withhold State or Federal income tax from payments made to Legal Advisor; Board will not make disability insurance contributions on behalf of Legal Advisor; and Board will not obtain Workers' Compensation Insurance on behalf of Legal Advisor.

**6. MAXIMUM FEES AND EXPENSES TO BE PAID TO LEGAL ADVISOR.**

Legal Advisor's maximum payments, exclusive of expert fees and costs, shall not exceed \$852,000.00 for the term of this Contract.

**7. BOARD'S RESPONSIBILITIES.** The Board shall assist Legal Advisor by placing at Legal Advisor's disposal all information available to Board, which is pertinent to Legal Advisor's duties. Board shall arrange for access to and make all provisions for Legal Advisor to enter upon District property as required for Legal Advisor to perform its services. The Board acknowledges that Legal Advisor is not responsible for the legal acts, omissions, tactical and strategic decisions of others made prior to its involvement in the case identified in the scope of services.

**8. RECORDS.** Legal Advisor shall keep such records and accounts as may be necessary in order to complete the Legal Advisor's duties and to obtain reimbursement for any expenses for which Legal Advisor expects to be reimbursed. Legal Advisor shall keep all books and records, which are considered public records in accordance with Chapter 119, Fla. Stat.

**9. TERMS AND CONDITIONS.**

a. Termination – The Legal Advisor shall have the option to terminate the Contract upon written notice to the General Counsel or his designee. Such notice must be received at least ten (10) days prior to the effective date of termination, unless Legal Advisor has been appointed to a governmental position that requires his services in less than ten (10) days. The Board shall have the option to terminate the Contract upon written notice to the Legal Advisor. Such notice shall be received at least ten (10) days prior to the effective date of termination. Earlier termination dates may be established by mutual consent of both parties.

b. This Contract cannot be assigned, nor can any one other than Legal Advisor perform the services required under this Contract, unless expressly authorized by this Contract or otherwise approved in writing by both parties.

c. Conflict of Interest – The Legal Advisor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which will conflict in any way with the performance of services required hereunder as provided for either in Section 112.311, Fla. Stat. or in the rules governing the Florida Bar. Similarly, the Legal Advisor represents that it shall not knowingly employ any person having a conflict of interest to assist it in the performance of the services to be provided pursuant to this Contract and if it become aware that any person is employed with such a conflict of interest it will take the appropriate actions to protect the interest of the Board. The Legal Advisor shall promptly notify the Board in writing of all potential conflicts of interest owing to any perspective business association, interest or other circumstance that may influence or appear to influence the Legal Advisor's judgment or the quality of services provided by Legal Advisor pursuant to this Contract. Such written notification shall identify the perspective, the business association, interest or circumstances, and the nature of the work that the Legal Advisor might undertake. Said notification shall request an opinion of the Board as to whether the association, interest or circumstances would, in the opinion of the Board, constitute a conflict of interest. The Board agrees to notify the Legal Advisor of its opinion within twenty (20) days of its receipt of notification by the Legal Advisor. If, in the opinion of the Board, the prospective business association, interest or circumstances would not constitute a conflict of interest, the Board shall so state in the notification and the Legal Advisor shall have the option of entering into said association, interest or circumstances as he deems appropriate.

d. Legal Advisor shall report to Chief Legal Counsel.

e. Entire Contract – This Contract, including all exhibits hereto and the Legal Advisor's Retainer Agreement, constitutes the entire Contract between the Board and the Legal Advisor with respect to the subject matter hereof, and it supersedes all other oral or written understandings or contracts relating to the subject matter hereof. This Contract may not be amended except in writing signed by both parties.

10. **SEVERABILITY.** In the event that any term, part or provision of this Contract is found to be illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions and provisions shall not be affected, and the rights and obligations of the

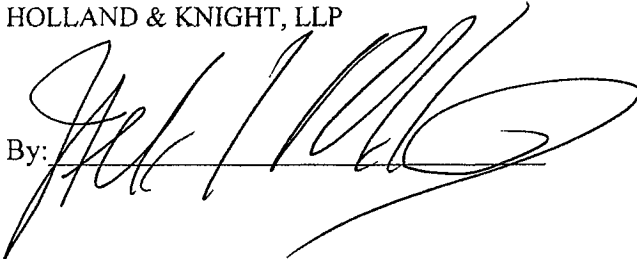
parties shall be construed and enforced as if the Contract did not contain the particular term, part or provision held to be invalid.

11. **LAW AND VENUE.** This Contract shall be governed by and construed in accordance with the laws of the State of Florida, and venue shall be in Palm Beach County, Florida.

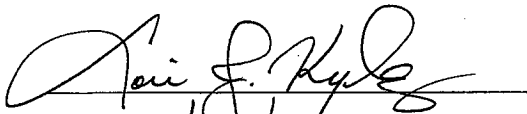
12. **STRICT PERFORMANCE.** The failure of either party to insist on strict performance of any covenant or condition herein shall not be construed as a waiver of such covenants or conditions in any instance.

IN WITNESS WHEREOF, This Contract has been executed on the \_\_\_\_\_ day of February 2007.

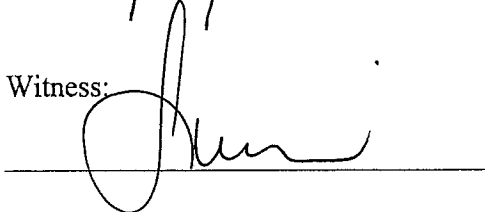
HOLLAND & KNIGHT, LLP

By: 

Witness:

  
Date: 2/23/07

Witness:

  
Date: 2/23/07

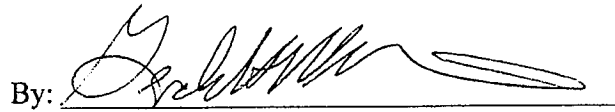
THE SCHOOL BOARD OF PALM BEACH COUNTY, FL

By: \_\_\_\_\_  
William G. Graham, Chairman  
Date: \_\_\_\_\_

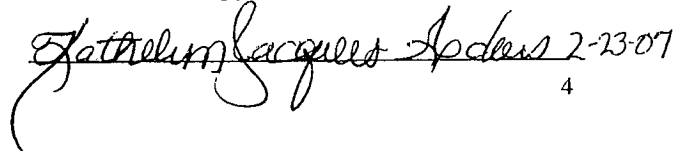
Attest:

By: \_\_\_\_\_  
Arthur Johnson, Ph.D., Superintendent

Date: \_\_\_\_\_

By:   
Gerald A. Williams  
Chief Counsel to the School Board

Reviewed and Approved by:

 2-23-07  
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## **SCOPE OF SERVICES**

Legal Advisor shall provide legal services in the case of The School Board of Palm Beach County, Florida v. The Morganti Group, Inc., as successor in interest to Morganti Florida, Inc., Morganti Florida, Inc. and M.P.A. Architects, Inc. f/k/a Marion, Puluga & Associates, Case No.: 502005CF6997XXXXMB, including but not limited to preparation, filing, and responding to emails, correspondence, discovery, motions, and pleadings; preparation for and handling all aspects of discovery, mediation and pre-trial matters; attendance at pre-trial meetings, depositions, hearings, mediation, and trial. Legal Advisor shall provide the above stated legal services in accordance with the approved budget for each stage of this matter. The stages of this matter include 1) case assessment, development and administration (includes mediation whether voluntary or court ordered), 2) pre-trial pleadings and motions, 3) discovery, and 4) trial preparation and trial. It is the School Board's intention that Legal Advisor shall adhere strictly to the budget as approved by the Chief Counsel.

## **EXPENDITURES**

The School Board's Finance Division requires that all funds be reserved in advance for attorney's costs and fees. Therefore, the establishment of projected expenditures is necessary for the business operations of the School District of Palm Beach County and should be included in the initial Contract. Projected expenditures are also critical for processing bills and rendering payment.

## **BILLING**

When a matter is assigned to outside counsel the appropriate partner, associate and/or paralegal that will be assigned to the matter must be designated. Outside counsel is expected to make the highest and best utilization of each of the paraprofessionals or professionals in the firm for attendance at meetings, depositions or court appearances.

Outside counsel is to bill on a 30-day cycle. Bills must be submitted no later than two (2) weeks after legal services for that bill were performed. At fiscal year end and for closing of fiscal year school business, bills must be submitted to the Department of Legal Services no later than June 20, all invoices for services rendered up to and including June 15. Further, for purposes of accrual of fiscal year expenses, a projected estimate of outside counsel costs and fees incurred between June 16 and June 30 must be received by the Department of Legal Services no later than June 20. Failure to comply with the aforementioned deadline will preclude payment for prior fiscal year's billings, unless approved by the Chief Counsel.

## **Exhibit A**

Bills will be paid in a timely manner provided that the attorney adheres to the billing requirements of the Attorney’s Contract, and this Guideline, provided all backup documentation is included and satisfies the School District’s Finance Department.

## **PRE-AUTHORIZED FEES AND COSTS**

**(The following must be pre-authorized or they will not be reimbursed)**

1. Research that will amount to three (3) or more hours of time. Research billing must be via separate line item and delineate research subject.
2. Out of County Travel. Mileage charges will identify the destination, number of miles, rate and purpose of travel. Any travel, per diem mileage or lodging expenses will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
3. The School Board of Palm Beach County will not pay for more than one attorney to attend depositions, motion hearings, witness interviews, trial or other hearings, etc., unless previously authorized through the Department of Legal Services or designee.
4. If counsel is solicited by a School Board representative other than the Chief Counsel, to represent or to do research for the District, or to provide information in any manner whatsoever for the District or any representative of the District, outside counsel must immediately refer the matter to the Department of Legal Services for assignment. If assigned to outside counsel, a Chief Counsel file number generated by the Department of Legal Services will be assigned to the matter and must be so noted on all outside counsel invoices. Invoices for matters that are not assigned to outside counsel by the Department of Legal Services and do not have an assigned Chief Counsel file number will be returned unpaid.

Expert witnesses and fees must be pre-approved by letter from the Department of Legal Services or designee.

Court reporter services provided in the District’s “Court Reporter” ITN must be utilized (see attached charts), if available, unless other services are provided at a more favorable rate and/or are approved by the Department of Legal Services or designee.

## **PROHIBITED BILLING PRACTICES**

1. It is inappropriate to bill for secretarial, administrative time, or word processing.
2. It is inappropriate to bill for standard file opening or closing.
3. Regular in-county mileage or travel and telephone calls to the School District are not reimbursable, except as stated in the Contract and Guidelines.
4. Entry of submitted billable hours and status reports are not reimbursable.

# INVOICES

All invoices must adhere to the following requirements:

## Reimbursable Expenses

1. Expenses and costs may include, but are not limited to, out-of-pocket expenses for express mail, long distance telephone, postage, photocopying, court filing fees, witness fees and previously approved travel.
2. The School District of Palm Beach County's standard rate of reimbursement will be in accordance with Florida Statute Chapter 112. The standard rate of reimbursement is the following:
  - A. Mileage will be reimbursed at the standard rate of \$.485 per mile.
  - B. Meal allowance will be reimbursed at the following rates (tips are not reimbursable):

<u>Breakfast</u>	\$6.00 when travel begins before 6:00 a.m. and extends beyond 8:00 a.m.
<u>Lunch</u>	\$12.00 when travel begins before 12:00 noon and extends beyond 2:00 p.m.
<u>Dinner</u>	\$22.00 when travel begins before 6:00 p.m. and extends beyond 8:00 p.m.
  - C. Hotel/motel expenses will be reimbursed for actual amount of receipt based on prior approval only.
  - D. Other approved substantiated expenses, i.e., turnpike tolls, parking fees, related communication expenses, car rental, etc., will be reimbursed for amount of receipt. Should copies of backup documentation not be included with outside counsel's bills then such disbursements will be deducted from amount due and payable. Incidental personal expenses are not reimbursable.
3. All costs shall be itemized and invoiced separately from legal fees. Any costs which are to be incurred with a singular cost exceeding \$200.00 must be pre-authorized by the Office of Chief Counsel of the School Board or designee.
4. All requests for payment of costs eligible for reimbursement shall include copies of paid receipts, invoices, or other documentation acceptable to the School Board's Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the legal services. Eligible costs include the following:

Long Distance Telephone Calls. Shall identify the person(s) called, purpose of call, time and costs.

Mileage Charges (out of county). Shall identify the destination, number of miles, rate and purpose of travel.

Travel. Must be pre-authorized by the Department of Legal Services or designee and may be reimbursable in accordance with the rates and conditions set forth above under Reimbursable Expenses.

Photocopying shall be reimbursed at a rate of \$.15 per single-sided copy and \$.20 per double-sided copy. Reimbursable photocopying costs shall be itemized on the invoices (example: 15 copies @ .15 = \$2.25).

Express Mail and Fax Machines. Reimbursement for express mail and fax charges are discouraged and such expenses are to be incurred only under extraordinary circumstances. Fax reimbursement is at the rate of \$.25 per page and shall be itemized on the invoices (example: 4 pages @ .25 = \$1.00). Express Mail must have backup documentation for reimbursement.

Other Costs. Receipts must be included with all invoices for any and all reimbursable costs to be paid.

Fees. Shall be in unit billing. Invoices shall include the professional's name (or initials), the date of service and description of service, the hours incurred for the same, the hourly rate being charged, the dollar amount (hours x rate), and the grand total of both hours and dollars for all dates of service. Hourly rates are to be in accordance with the Contract. An example is listed below.

### Sample of Invoice (Fees)

Date	Professional	Description	Time	Cost
1/10/01	EEW	Review deposition of Jane Doe	.3	\$37.50
1/10/01	EEW	Prepare letter to insurance carrier	.5	\$62.50
1/10/01	JJE	Telephone client re depositions	.2	\$30.00
1/12/01	XEX	Attend meeting at SB offices	1.5	\$262.50

#### Summary of Fees:

Professional	Time and Rate	Total Cost
EEW	.8 hours @ \$125.00	\$100.00
JJE	.2 hours @ \$150.00	\$30.00
XEX	<u>1.5 hours @ \$175.00</u>	<u>\$262.50</u>
<b>Total Hours</b>	<b>2.5</b>	
	Total Fees for 12/13/06 through 2/28/07	\$392.50