

# DAVIS, BENGTON & YOUNG, APLC

1960 The Alameda, Suite 210  
San Jose, California 95126  
669.245.4200 (telephone)  
408.985.1814 (fax)

04/18/2023

## ATTORNEY-CLIENT FEE AGREEMENT

DAVIS, BENGTON & YOUNG, APLC (“Attorney”), and ALUM ROCK UNION SCHOOL DISTRICT (“Client”), collectively, the “Parties,” hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit, if any, called for under Paragraph 7.

2. **SCOPE OF SERVICES.** Client is hiring Attorney to represent Client in litigation as directed by Client. Client hires Attorney to provide legal services to Client and to do all things necessary to bring the litigation referenced in this Paragraph to a conclusion by either settlement or trial. This Agreement shall not extend to appeals, if any, or for any subsequent action necessary after said stated matter as another, separate contract will be required for such representation.

3. **RESPONSIBILITIES OF THE PARTIES.** Attorney will provide those legal services reasonably required to represent Client in connection with the claims described in Paragraph 2 and will take reasonable steps to keep Client informed of progress and developments, and to respond promptly to inquiries and communications. Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information and developments which may come to Client’s attention, to abide by this Agreement, and to keep Attorney advised of Client’s address, telephone number and whereabouts. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client’s defense in this matter.

4. **LEGAL FEES.** As stated in Paragraph 7, *infra*, no retainer amount is required to initiate Attorney’s services.

Attorney’s fees will be billed and invoiced in a manner which reflects the number of hours expended by Attorney in performing legal services for Client. Attorney’s hourly rates for this matter are **\$275/hour (Partner/Sr. Associate)**, **\$235/hour (Associate -less than 10 years experience)**, and **\$120/hour (Paralegal)**.

Attorney bills in minimum units of 1/10 hours (0.1). Attorney shall have the right to change these rates not more than once each calendar year. Client will be given thirty (30) days’ notice of any changes to the above-referenced rates. Client will be presumed to have agreed to the

new rates if Client does not discharge Attorney within thirty (30) days of receiving notice of a rate change. Client shall raise any questions concerning any bill within thirty (30) days of receipt of Attorney's bill, thereafter any of those fees or charges shall be deemed reasonably incurred.

**5. NEGOTIABILITY OF FEES.** The rates set forth above are not set by law, but are negotiable between an Attorney and Client.

**6. COSTS AND LITIGATION EXPENSES.** Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney. Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, costs and expenses will be charged at Attorney's cost.

In-office photocopying:	.20/page
Facsimile charges:	\$1/page
Mileage:	.58/mile
Other:	

To aid in the preparation or presentation of Client's defense, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges. No expert, consultant, or investigator will be hired or retained without Client's prior consent.

Client authorizes Attorney to incur all reasonable costs in Attorney's judgment.

Attorney shall obtain Client's consent before incurring any costs in excess of \$1,500.

Attorney shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

If an award of fees and/or costs is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable. Client agrees that, whether or not attorneys' fees or costs are awarded by the court in Client's case, Client will remain responsible for the payment, in full, of all attorneys' fees and costs in accordance with this Agreement.

Additionally, Client understands that if Client's case proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such award will be entirely the responsibility of Client.

**7. DEPOSIT.** No retainer deposit is required from Client.

**8. MONTHLY BILLING STATEMENTS.** Attorney will send Client monthly billing statements for costs, disbursements and expenses incurred in connection with this matter. Each statement is to be paid in full within thirty (30) days after the date of such statement.

**9. APPROVAL NECESSARY FOR SETTLEMENT.** Attorney will not make any settlement or compromise of any nature of any of Client's claims or defenses without Client's prior approval. Client retains the absolute right to accept or reject any settlement. Client agrees to consider seriously any settlement offer Attorney recommends before deciding to accept or reject such offer or demand. Client agrees not to make any settlement or compromise of any nature of any of Client's claims without prior notice to Attorney.

**10. LIMITATION OF REPRESENTATION.** Attorney is representing Client only on the matter described in Paragraph 2. Attorney's representation does not include independent or related matters that may arise, including, among other things, claims for other damages, workers' compensation, disputes with a health care provider about the amount owed for their services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy.

**11. DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time, upon written notice to Attorney. Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) for good cause and upon reasonable notice to Client. Good cause includes Client's breach of this contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical.

Notwithstanding Attorney's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all fees and costs incurred prior to the termination of Attorney's representation of Client in this matter.

**12. CONCLUSION OF SERVICES.** When Attorney's services conclude, all unpaid charges will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a deposit against costs to apply to such unpaid charges. After Attorney's services conclude, upon request, Client's file and property will be delivered to Client, or Client's other attorney, whether or not Client has paid any fees and/or costs owed to Attorney.

**13. LIEN.** Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums owing to Attorney for any unpaid costs, or attorneys' fees, at the conclusion of Attorney's services. The effect of such a lien is that Attorney may be able to compel payment of

fees and costs from Client even if Attorney has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien.

By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

\_\_\_\_\_ (Client Initial Here)      # \_\_\_\_\_ (Attorney Initial Here)

**14. DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promise or guarantees about the outcome.

**15. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

**16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**17. MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be modified by subsequent agreement of the Parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

**18. EFFECTIVE DATE.** This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

**19. APPLICABLE LAW.** Any dispute that may arise from this Agreement is to be governed by California law.

**THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.**

Each signatory to this Agreement hereby represents, confirms, and certifies that he/she is authorized to enter into valid contractual arrangements and, in particular, this Agreement on behalf of the entity for which he/she is signing this Agreement.

**ALUM ROCK UNION SCHOOL  
DISTRICT**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Kolvira Chheng, Assistant Superintendent  
of Business Services

DATED: \_\_\_\_\_

**DAVIS, BENGTON & YOUNG, APLC**

\_\_\_\_\_  
Mark E. Davis, Partner