



Agenda Item Details

Meeting	Dec 19, 2024 - Board of Education Regular Meeting - Annual Organization Meeting - REVISED
Category	10. CONSENT AGENDA/RATIFICATION
Subject	10.5 Ratification of Agreement for Bond Counsel Services with Dannis, Woliver Kelley (DWK)
Type	Action (Consent)

QUICK ABSTRACT/SUMMARY:

Ratification of Agreement with Dannis, Woliver and Kelley (DWK) to provide bond counsel and related financing services associated with a 2024 bond election and subsequent issuance of bonds.

COMMENTS/RATIONALE:

The District relies on bond counsel and related financing services to ensure all legal requirements are addressed when implementing a bond program.

FINANCIAL IMPACT:

Not applicable.

[DWK Agreement for Bond Counsel Service - Executed.pdf \(306 KB\)](#)

AGREEMENT FOR BOND COUNSEL SERVICES

MENLO PARK CITY SCHOOL DISTRICT

This Agreement is made and entered into as of November 22, 2024, by and between Menlo Park City School District, hereinafter referred to as "District," and Dannis Woliver Kelley, a professional corporation, hereinafter referred to as "Attorney."

WHEREAS, District desires to retain Attorney to provide bond counsel and related financing services associated with a 2024 bond election (or another future election date) and subsequent issuance of bonds therefrom ("Bonds").

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

A. SCOPE OF WORK AND PAYMENT

District appoints Attorney to represent, advise, and counsel it from November 22, 2024, and continuing thereafter in connection with the District's 2024 general obligation bond election and bond issuance ("Bond Services") as more specifically described in **Attachment A** hereto, and incorporated herein by reference. Bond Services may also be provided under this Agreement for elections on other dates in the future if desired by District and without amendment of this Agreement, as well as for refundings of previously issued bonds. Bond Services shall be compensated in the manner described in **Attachment A**. The performance of Bond Services rendered prior to the date of this Agreement is hereby ratified and approved. Attorney may represent District in other legal matters and provide other services as desired pursuant to a separate Professional Services Agreement.

B. TERM AND TERMINATION

1. Term. The term of this Agreement shall commence as of October 17, 2024, and shall expire on the earlier of: the final sale of bonds ("Bonds") from the 2024 (or later) authorization; or five years after commencement of the Agreement. If, at the time of expiration, there remains additional general obligation bond issuance authority, this Agreement may be renewed for additional terms at the discretion of the parties.

2. Termination of Attorney. District may terminate DWK without cause upon 30 days' written notice to Attorney; provided, however, that if District terminates Bond Services without cause after Attorney has rendered Bond Counsel Services or Disclosure Counsel Services (as described on Attachment A), then District shall pay Attorney for services rendered, at the rate of \$325 per hour for attorneys and \$120 per hour for paralegals, plus DWK's out-of-pocket expenses, from the proceeds of Bonds, if and when thereafter issued.

C. OTHER PROVISIONS

1. Malpractice Coverage. Attorney agrees to prepare periodic reviews of relevant court decisions, legislation, and other legal issues. Attorney agrees to keep current and in force at all times a policy covering incidents of legal malpractice.

2. Performance of Obligations. District shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, perform the obligations it has agreed to perform under this Agreement.

3. Food/Meals. Occasionally Attorney may provide District officials and/or employees with working lunches or meals when working with District officials and/or employees. Attorney may provide such food or meals without additional charge in exchange for the consideration provided by the District under this Agreement.

4. Independent Contractor. It is expressly understood and agreed to by both parties that Attorney, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the District. Attorney does not anticipate that in the course and scope of performing legal services it will have any interaction with any pupil that is not under the immediate supervision and control of a District employee or a pupil's parent or guardian. If District requests legal services in which Attorney will have unsupervised interaction with pupils, Attorney will complete fingerprinting and background check clearances as required by Education Code Section 45125.1 prior to commencing such services. Attorney further agrees to comply with applicable, prevailing state vaccination or testing requirements.

5. Consent to Use of E-Mail and Cloud Services. In order to provide District with efficient and convenient legal services, Attorney will communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, District is consenting to such e-mail transmissions with District and District's representatives and agents. In addition, Attorney uses a cloud computing service with servers located in a facility other than Attorney's office. Most of Attorney's electronic data, including email and documents, are stored in this manner. By entering into this Agreement, District understands and consents to having communications, documents and information pertinent to the District's matters stored through such a cloud-based service.

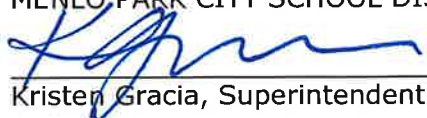
6. Use of Subconsultants/Subcontractors. Attorney uses the services of legal sub-consultants and independent contractors from time to time on finance transactions, including federal taxation specialists, which costs are paid in full by Attorney without additional expense to District. District consents to the use of such sub-consultants or independent contractors at Attorney's discretion.

7. Conflicts of Interest. Because Attorney represents many school and community college districts, other educational entities, and bond underwriters, on occasion, conflicts of interest may arise in the course of Attorney's representation. If Attorney becomes aware of any potential or actual conflicts of interest related to its representation of District, Attorney will inform the District of the conflict and comply with the legal and ethical requirements to fulfill its duties of loyalty and confidentiality to District. If District has any question about whether Attorney has a conflict of interest in its representation of District in any matter, it may contact Attorney or other legal counsel for clarification.

8. Privacy Notice of Collection of Personal Information. Attorney respects the District's privacy and aims to be transparent with District. For this reason, Attorney has adopted a privacy policy that describes all the information Attorney collects from or about District employees in the course of providing the District with legal services, as well as how Attorney uses this information and how long Attorney will retain it. Attorney's privacy policy, which also describes the District's rights as a consumer under applicable law, is accessible on Attorney's website at <https://www.dwkesq.com/ccpa/>. The terms and disclosures of this privacy policy are incorporated herein, and the signature on the agreement below confirms that District has read or will read Attorney's privacy policy. If the District has any questions regarding Attorney's privacy policy or its rights, the District should email Attorney at DataSecurity@dwkesq.com.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement for Professional Services.

MENLO PARK CITY SCHOOL DISTRICT



Kristen Gracia, Superintendent

11/22/24

Date

DANNIS WOLIVER KELLEY



Meredith Johnson, Shareholder

11/22/24

Date

ATTACHMENT "A"
SCOPE OF WORK AND FEES

I. SCOPE OF WORK

Attorney shall provide the following Bond Services to District with regard to a 2024 general obligation bond election and the subsequent issuance of Bonds.

A. Bond Issuance Services

Bond Issuance Services shall commence after, and only in the event of, a successful bond election. Bond Issuance Services have two service components: Bond Counsel Services and Disclosure Counsel Services.

1. Bond Counsel Services. Services to issue bonds ("Bonds") after a successful election ("Bond Counsel Services") will include the following:
 - a) Preparation of the proceedings to certify the election results;
 - b) Advice regarding the initial formation and creation of a Bond Oversight Committee and assistance in establishing policies to manage the committee, including providing sample policies, bylaws and forms for consideration;
 - c) Consultation with the District and its staff, the County, and the District's financial advisor concerning the Bonds and the timing, terms and structure of the offering;
 - d) Preparation of the proceedings to authorize the Bonds; the resolution of the District governing board approving the Bond issuance and setting forth the terms and conditions of the bonds and their form, date, denominations and maturity (if necessary); the resolution of the County Board of Supervisors, if necessary, authorizing the issuance of the Bonds; preparation of the proceedings for the sale of the bonds by competitive or negotiated sale;
 - e) Attendance at up to two (2) in-person meetings of the District Governing Board and participation in all meetings with the District's financial advisor and other consultants regarding the issuance and sale of the Bonds, as needed or requested;
 - f) Coordination of the full finance team as necessary for the review of documents and finance plans;
 - g) Examination of the proofs of the Bonds, preparation of the final closing papers, organization and conduct of the Bond closing, and the rendering of a final legal opinion at the time of delivery of and receipt of payment for the bonds;
 - h) Review of post-closing legal compliance requirements with the District.
2. Disclosure Counsel Services. Services to assure compliance of the Bonds with federal securities laws ("Disclosure Counsel Services"), if requested, will include the following:
 - Preparation of the Preliminary Official Statement, the final Official Statement, and continuing disclosure certificate which accompanies the latter, for use in marketing and sale of the bonds;
 - Review of Continuing Disclosure filing status pursuant to MSRB Rule 15c2-12; and
 - Delivery of a disclosure counsel opinion (10b-5 opinion) at closing.

II. FEES

A. Bond Counsel Services

For each separate series of bonds issued during the term of this Agreement, Bond Counsel Services shall be compensated a set fee of \$40,000 per transaction, plus reimbursement of actual expenses of not to exceed \$2,000. Fees shall not be due and owing unless and until Bonds are issued, and shall be paid or reimbursed from Bond proceeds.

B. Disclosure Counsel Services

For each separate series of Bonds issued during the term of this Agreement, Disclosure Counsel Services shall be compensated a set fee of \$25,000 per transaction, plus reimbursement of actual expenses of not to exceed \$500. Fees shall not be due and owing unless and until Bonds are issued, and shall be paid or reimbursed from Bond Proceeds.

C. Refundings of Outstanding Bonds

The above Bond Counsel and Disclosure Counsel fees would apply with a supplemental fee of **\$7,500** per transaction for our due diligence related to the obligations to be refunded, drafting of an escrow agreement and coordination of the escrow and delivery of a defeasance opinion for the obligations to be repaid.

III. HOURLY SERVICES

The following additional services are not provided within the fixed fee Bond Counsel Services and Disclosure Counsel Services but can be provided on request under this agreement either on an hourly basis at the rates described in a then-applicable Legal Services Agreement between the District and Attorney or as otherwise agreed by the Parties in writing:

- Post-closing legal advice requiring significant legal research;
- Capital or real estate project planning, implementation, construction, and litigation;
- Applications for Private Letter Rulings from the IRS;
- Negotiation of investment contracts;
- In-person participation in rating agency meetings or bond insurance agencies outside California;
- Ongoing legal advice or training related to the Citizen's Bond Oversight Committee; and
- Bond Services for Bond Anticipation Notes, capital leases, certificates of participation, or other bond financings, which, if requested by District during the term, may be incorporated by reference into this Agreement at the charges agreed to by the parties.

In no event will Attorney provide campaign-related legal services to the District or any campaign committee formed to support a bond measure campaign of the District under this Agreement or any other Agreement.