

JOINT POWERS AGREEMENT

FOR LEGAL SERVICES

THIS AGREEMENT is entered into by and between the TULARE COUNTY OFFICE OF EDUCATION (comprised of the Tulare County Superintendent of Schools and the Tulare County Board of Education), and the COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT and TULARE COUNTY SCHOOL DISTRICTS which in the manner provided for herein become parties to this Agreement, (all hereinafter collectively referred to as "Districts" or singularly referred to as "District"), and the COUNTY OF TULARE (hereinafter referred to as the "County") with reference to the following:

A. Districts are authorized to obtain legal services and retain legal counsel by Education Code Sections 35041.5, 35160, 35160.1, 35160.2, and 70902.

B. County Counsel is authorized to render legal services to the Districts and charge the Districts a fee not to exceed the total cost to the County for the legal services rendered by Government Code Sections 26520 and 26529.

C. Districts are authorized to exercise jointly any powers common to them by Government Code Section 6500 et seq.

D. Districts share common legal issues and needs for legal services.

E. The provision of legal services by County Counsel to the Districts on a joint basis reduces the cost for services to each District and facilitates the delivery of legal services to the Districts in a consistent and uniform manner.

ACCORDINGLY, IT IS AGREED:

1. Term: This Agreement will become effective as of July 1, 2012 and will expire on June 30, 2014, unless otherwise terminated as provided in this Agreement.

2. Legal Services: The County will provide those legal services required by the Districts which have been traditionally provided by the County Counsel, excluding the following:

- a. Complex litigation that could seriously impact upon the resources of the County Counsel,
- b. Specialized legal matters including, but not limited to: labor relations and collective bargaining, special education, workers' compensation, defense of personal injury or property damage or other tort claims, eminent domain proceedings, and matters involving tax law or bankruptcy law.

The County will make available the equivalent of three (3) full-time attorneys and one (1) full-time paralegal from the staff of County Counsel to provide the legal services required by the Districts pursuant to this Agreement; subject, however, to staffing fluctuations and the County's own need for legal services. In the event that County is unable, or fails, to provide the equivalent services of three (3) full-time attorneys and one full-time paralegal or in the event the County provides services to Districts that exceed the equivalent of three (3) full-time attorneys or one full-time paralegal by greater than Two Hundred and Fifty Hours (250) in any fiscal year, the parties, at the request of either party, will meet for the purpose of negotiating a corresponding adjustment in the fee paid by Districts based on the discrepancy in hours.

3. Professional Responsibilities - Duty of Loyalty, Ethical Conflicts of Interests:

Professional ethical rules prevent the County Counsel, without the informed written consent of each client, from 1) accepting representation of more than one client in the same matter in which the interests of the clients *potentially* conflict; or 2) accepting or continuing representation of more than one client in the same matter in which the interests of the clients *actually* conflict; or 3) representing a client in a matter and at the same time in a separate matter accepting as a client a person or entity whose interest in the first matter is adverse to the client in the first matter. The strictures against dual representation in the same matter have been interpreted to include a "duty of loyalty" to the client which in limited circumstances may prohibit County Counsel from accepting or continuing representation of a client which is adverse to another client even in unrelated matters without the informed written consent of each client. Due to the fact that the County Counsel's office is established by law to provide legal services to County officers,

agencies and departments (“County”), and has in addition undertaken to provide legal services to multiple school agencies and districts by reason of this agreement, the legal interests of the County generally may *potentially* conflict in a matter with the legal interests of a District or Districts. By executing this Agreement, the parties acknowledge and understand these potential conflicts of interests and have provided their informed written consent to this joint representation. County Counsel will seek further informed written consent of the clients in the event a potential conflict should become actual in a particular case.

In addition, occasions may arise when the legal interests of the County and a District or Districts may *actually* conflict in a specific matter. In such event, the County Counsel will disclose to all parties the relevant circumstances and the actual and reasonably foreseeable adverse consequences to the clients arising from the conflict, and may not continue to provide dual representation of the parties in the matter without the informed written consent of each client. Moreover, the County Counsel may not represent the interests of either single client without the informed written consent of both clients. Thus, in the event of an actual conflict, the County Counsel will declare a conflict of interest which would allow any client to obtain outside representation at its own expense; and in such case will either: 1) not undertake representation of either client on the particular matter, or 2) obtain the informed written consent of all clients involved to provide dual representation of both clients, or sole representation of the County client.

In the event that an actual conflict arises between the legal interests of two or more Districts to this Agreement in a matter, the County Counsel may not undertake to provide representation to either party, and the Districts will be responsible for securing outside legal representation at their own expense.

In addition to and notwithstanding the foregoing, no obligation to provide legal services pursuant to this Agreement will exist where the County Counsel is prohibited by law, or rules of professional conduct including, but not limited to, 1) avoiding due process of law violations, 2) avoiding the appearance of impropriety, 3) the need to protect confidential relationships based on past representations on unrelated matters, 4) the prohibition against joint representation of parties

whose legal interests conflict, and 5) the duty of loyalty, all of which may arise by reason of the County Counsel's relationship with the County and the Districts collectively and singularly. In such event, Districts will be responsible for securing outside legal representation at their own expense. The County Counsel agrees to endeavor to avoid these situations whenever possible by means of establishing an ethical wall within the office, or, in the event that interests of two or more clients become adverse, by obtaining the informed written consent of all involved clients.

4. Attorney-Client Relationship: It is understood and agreed that a separate attorney-client relationship exists between the County Counsel and each District. However, the parties agree that, due to the common legal issues shared by the Districts, the County Counsel may in appropriate instances share its opinions and advice and other information of general interest with the Districts or a particular District, and whenever it does so will preserve the confidentiality of student, personnel or other information protected by law.

5. Fee: The Districts will pay the following fee to the County for the legal services provided by County Counsel pursuant to this Agreement:

A. The total amount of \$ 639,398.00 for the 2012-2013 fiscal year, to be prorated among each District as determined by the Districts.

B. For the 2013-2014 fiscal year, the total amount of \$ 639,398.00, plus a percentage increase in that amount, if any, that is specified on the table of over-the-year percentage increase in the Consumer Price Index (All Items – All Urban Consumers Index – U.S. City Average), published by the United States Department of Labor, Bureau of Labor Statistics, that occurs for the twelve (12) month period ending December 31, 2012. The percentage increase in the fee may not exceed a maximum of five percent (5%).

6. Coordinator: The Tulare County Superintendent of Schools (“County Superintendent”), will coordinate and administer the Agreement on behalf of the Districts. In that capacity, the County Superintendent will calculate and collect each District’s prorata share of the total fee for legal services provided by this agreement.

7. Payment: Each District will pay to the County Superintendent its prorata share of the total fee specified above in two (2) equal biannual installments. For each fiscal year, the first

payment will be due on or before July 15; and the second payment due on or before January 15.

The County Superintendent will disburse the total fee to the County in two (2) equal biannual payments. For each fiscal year, the first payment to be made no later than July 31, and the second payment to be made no later than January 31.

8. Participation: No District may be permitted to become a party to this Agreement after July 31 of any fiscal year during the term of this Agreement.

9. Termination: Any District may, by providing not less than five (5) days written notice to the County Superintendent and the Tulare County Counsel, terminate its participation in this Agreement, provided, however, that said District will remain liable for all amounts assessed against it for its prorata share of the fee specified above.

In addition, the Tulare County Superintendent of Schools may terminate this Agreement on June 30, 2013, by providing written notice to County Counsel on or before April 1, 2013.

10. Renewal: On or before March 31, 2014, the County Superintendent, representatives of the Districts and representatives of the County and County Counsel will meet to determine whether, and on what terms and conditions, this Agreement should be renewed following its expiration, including the scope of legal services to be provided, and the total cost to the County to render such legal services.

11. Non-Participating Districts: The County Counsel may not provide legal services to any District that does not participate in this Agreement.

12. Assignment: No District may assign or transfer its interest or any rights or duties under this Agreement without the written consent of the Districts and the County.

13. Joint Powers Agency: Nothing contained in this Agreement may be deemed to cause or imply the formation of any public entity separate and distinct from any of the Districts.

14. Resolution: Each District may become a party to this Agreement by adopting a Resolution agreeing to participate in this Agreement, and to adhere to the terms and conditions hereof.

15. Inquiries: The Districts will endeavor, whenever feasible, to channel their legal inquiries through the County Superintendent. Inquiries made directly to the County

Counsel may be made by the Superintendent, or designee, of each District.

16. Amendment: This Agreement may not be amended, modified or altered without the express written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written below.

Dated: _____, 2012

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors

"County"

ATTEST: Jean Rousseau
County Administrative Officer/Clerk of the
Board of Supervisors of the County of Tulare

By _____
Deputy Clerk

Dated: June 4 _____, 2012

TULARE COUNTY OFFICE OF
EDUCATION

By 
Jim Vidak, Tulare County Superintendent
of Schools

"Districts"

Approved as to Form
County Counsel

By Harold W. Wolf
Chief Deputy 5-24-12

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Tulare County Agreement No. _____