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Via U.S. Mail and Email

Monica Mackie <monica.mackie@erlanger.kyschools.us>

Board of Education

Chad Molley, Superintendent

Erlanger-Elsmere Board of Education

500 Graves Avenue

Erlanger, KY 41018

Re: 2021 Engagement Letter for Retainer and General Representation

Dear Board Members and Superintendent Molley:

Thank you for allowing Frost Brown Todd the privilege of providing legal services to the Erlanger-Elsmere Board of Education for the past year (and the past many years). This letter will confirm our discussion with you regarding your engagement of our firm and will describe the basis upon which our firm will provide legal services to you. Accordingly, we submit for your approval the following provisions governing our engagement. **The hourly billing rate in this letter is \$265, which represents no increase over the 2020 rate.** If you are in agreement, please sign the enclosed copy of this letter in the space provided below. If you have any questions about this proposed rate or any of the provisions in this letter, please do not hesitate to call to discuss with me. Again, we are pleased to have the opportunity to serve you.

Client; Scope of Representation. Our Client in these matters will be the Erlanger-Elsmere Board of Education (the "Client"). We will be engaged to advise the Client in connection with various "retainer" and "general representation" matters. The monthly retainer discussed below in the "Fees" section of this letter will cover services such as attendance at regular board meetings (not including disciplinary/expulsion hearings or meetings in which only personnel matters are discussed), routine phone calls from the Superintendent and board members, AIA contract review and drafting of AIA contract approval letters (for first review of such contracts), and other such routine matters. The "general representation" services discussed below in the "Fees" section of this letter will include matters such as potential litigation, substantive personnel issues, legal research, preparation for and attendance at ARC meetings and expulsion hearings, substantive revisions to and drafting of contracts, second or subsequent reviews of AIA contracts, drafting documents, and other matters requiring greater time and attention than routine matters. **In the event that the Client**

asks us to represent it in municipal finance matters, complex real estate matters, or actual litigation (including arbitration or mediation), we reserve the right to negotiate a separate fee arrangement to represent the Client in such matters.

You may limit or expand the scope of our representation from time to time, provided that any substantial expansion must be agreed to by us. While we would be interested in assisting you in other matters, unless we are specifically engaged for some other future matter this will confirm that our representation of you is limited to the foregoing matters and will end when they are concluded.

Fees. As you may know, our firm has provided "retainer" services at a flat monthly retainer fee of \$800; the monthly retainer fee has not increased in many years. Our firm has provided more complex "general representation" services at an hourly rate of \$265. For the period July 1, 2021 through June 30, 2022, our firm will continue the monthly retainer of \$800 for routine matters and will bill "general representation" matters at an hourly rate of \$265 for attorneys and paralegals. **In the event that the Client asks us to represent it in municipal finance matters, complex real estate matters, or actual litigation (including arbitration or mediation), we reserve the right to negotiate a separate fee arrangement to represent the Client in such matters.**

Retainer services include attendance at regular board meetings and first review of routine, standard contracts (such as architect contracts) involving minimal negotiation. Retainer services do not include attending special board meetings, such as student discipline hearings. Those meetings will be billed at the "general representation" hourly rate.

Our hourly rates are reviewed periodically and may be increased from time to time. However, our hourly rates for the "retainer" and "general representation" matters may not be increased without the Client's written consent. It may be necessary to add or change attorneys or paralegals working on your behalf.

Potential Conflicts. As we have discussed, you are aware that our firm represents many other companies and individuals. This can create situations where work for one client on a matter might preclude us from assisting other clients on unrelated matters. It is possible that during the time that we are representing the Client, some of our present or future clients will have disputes or transactions with the Client. In order to avoid the potential for this kind of restriction on our practice, the Client agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to matters in which we have represented the Client, even if the interests of such clients in those other matters are directly adverse to yours. We do not intend, however, for you to waive your right to have our firm maintain confidences or secrets that you transmit to our firm, and we agree not to disclose them to any third party without your consent. We would, of course, take appropriate steps to insure that such information is kept confidential by us.

ABA Statement of Policy. We wish to inform the Client, and the Client acknowledges, that it is our firm's policy to comply strictly with the terms of the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975) in any response that

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the Client requests we make to the Client's auditors regarding "loss contingencies" affecting the Client.

Additional Standard Terms. Our engagement is also subject to the policies included in the enclosed memorandum.

We appreciate the opportunity to represent you. If these terms of our engagement are acceptable to you, please return a signed copy of this letter to me in the enclosed envelope. Our representation of the Board will commence upon receipt of the signed engagement letter.

We look forward to working with you again.

Sincerely,

FROST BROWN TODD LLC



Michael E. Nitardy

Enclosures

The foregoing is understood and accepted:

Erlanger-Elsmere Board of Education

By: _____

Print Name: _____

Print Title: _____

FROST BROWN TODD LLC

ADDITIONAL TERMS AND CONDITIONS OF CLIENT ENGAGEMENTS

1. **Expenses.** Expenses we incur on the engagement are charged to the Client's account. Expenses include such items as court costs, charges for computerized research services and hard copy document reproductions, long distance telephone, travel expenses, messenger service charges, overnight mail or delivery charges, extraordinary administrative support, filing fees, fees of court reporters and charges for depositions, fees for expert witnesses and other expenses we incur on your behalf. Our charges for these services reflect our actual out-of-pocket costs based on usage, and in some areas may also include our related administrative expenses.

2. **Monthly Statements.** Unless a different billing period is agreed upon with the Client, the Firm will render monthly statements indicating the current status of the account as to both fees and expenses. The statements shall be payable upon receipt. If statements are not paid in full within 30 days, we reserve the right to add a late charge of 1% per month of the amount due. If it becomes necessary for the Firm to file suit or to engage a collection agency for the collection of fees or expenses, the Client shall pay all related costs and expenses, including reasonable attorneys' fees.

3. **Advance Payments.** Any advance payment to be paid by the Client will normally be less than the Firm's ultimate fees and expenses. Such a payment or series of payments is not intended as a limitation upon the Firm's fees and expenses. The Firm may apply the advance payment toward any unpaid fees and expenses, in which event the Client shall make an additional deposit to restore the advance payment to its original level. Additional advance payments must be made within fifteen days of the date the request is made. Any unexpended balance of advance payments will be refunded to the Client, without interest, at the end of this engagement.

4. **Litigation Matters.** If this engagement involves litigation, the Client may be required to pay the opposing party's trial costs. Such costs include filing fees, witness fees, and fees for depositions and documents used at trial. We will not settle litigated matters without the Client's express consent. We require the Client's active participation in all phases of the case.

5. **Insurance coverage.** Unless we have been explicitly retained to address insurance coverage issues (as documented in this engagement letter), we have no responsibility or obligation to (a) identify any potentially applicable insurance coverage, (b) provide notice to any carrier, or (c) advise the Client on issues relating to insurance coverage at any point during our representation.

6. **Termination.** The Client has the right to terminate our representation at any time by notifying us of your intention to do so in writing. We will have the same right, subject to an obligation to give the Client reasonable notice to arrange alternative representation. In the event that either party should elect to terminate our relationship, our fees and expenses incurred up to that point still will be due to us. Upon payment to us of any balance due for fees and expenses, we will return to the Client, or to whomever the Client directs, any property or papers of the Client in our possession.

7. **Withdrawal.** Under the rules of professional conduct by which we are governed, we may withdraw from our representation of the Client in the event of, for example: nonpayment of our fees and expenses; misrepresentation or failure to disclose material facts concerning the engagement; action taken by the Client contrary to our advice; and in situations involving a conflict of interest with

another client. If such a situation occurs, which we do not expect, we will promptly give the Client written notice of our intention to withdraw.

8. Post-Engagement Services. The Client is engaging our Firm to provide legal services in connection with a specific matter. After completion of that matter, changes may occur in the applicable laws or regulations that could have an impact on the Client's future rights and liabilities. Unless the Client engages us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise the Client with respect to future legal developments.

9. Retention and Disposition of Documents. At the Client's request, its documents and property will be returned to the Client upon conclusion of our representation in the matter described above, although the firm reserves the right to retain copies of any such documents as it deems appropriate. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records. All documents and property, including those belonging to the Client, that are retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, and consistent with professional conduct rules, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us *within a reasonable time after the termination of the engagement* without further notice to the Client.

10. Parent/Subsidiary/Affiliate Relationships. The Client may be a subsidiary of a parent organization or may itself have subsidiary or affiliated organizations. The Client agrees that the Firm's representation of the Client in this matter does not give rise to an attorney-client relationship between the Firm and any parent, subsidiary or affiliate of the Client (any of them being referred to as "Affiliate"). The Firm, during the course of its representation of the Client, will not be given any confidential information regarding any of the Client's Affiliates. Accordingly, representation of the Client in this matter will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of the Client's Affiliates.

11. Consultation with Firm Counsel. From time to time, issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include conflict of interest issues and could even include issues raised because of a dispute between us and a client over the handling of a matter. The firm has several in-house ethics counsels who assist the firm's lawyers in such matters. We believe that it is in our clients' interest, as well as the firm's interest, that in the event that issues arise during a representation about our duties and obligations as lawyers, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation, the Client agrees that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our firm's counsel (either the firm's internal counsel or, if we choose, outside counsel), we have the Client's consent to do so and that our representation of the Client shall not, thereby, waive any attorney-client privilege that the firm may have to protect the confidentiality of our communications with our internal or outside counsel.

12. Retirement Plan Advice. If the Client engages the Firm to provide legal services with respect to a retirement plan that is subject to the Employee Retirement Income Security Act, the Client should be aware that certain "covered service providers" must disclose some very specific information to the Client as a responsible fiduciary before the Client engages those services. While the Firm would

not usually be serving as a “covered service provider,” there are some situations in which it might be. A description of the disclosures required in those situations can be located at www.dol.gov/ebsa/newsroom/fs408b2finalreg.html.

13. Authorization. By the Client’s agreement to these terms of our representation, the Client authorizes us to take any and all action we deem advisable on the Client’s behalf on this matter. We will, whenever possible, discuss with the Client in advance any significant actions we intend to take.

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