

Board of Education

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J. Vance Lee Superintendent
Capitan Municipal Schools
519 Smokey Bear Blvd. Capitan, NM 88316
575-354-8500
www.capitantigers.org

CAPITAN MUNICIPAL SCHOOLS BOARD OF EDUCATION

AGENDA ITEM EXECUTIVE SUMMARY

1. Board Meeting Date: February 10, 2025
2. Item Title: V.B.3 PowerSchool Data Breach Legal Counsel Proposal
3. Name of Presenter: J. Vance Lee, Superintendent
4. This item is for: ___ Action ___ Consent Agenda XX Discussion ___ Report/Information
5. Proposed Motion (Action Items Only, as presented).
6. Executive Summary: McDonald-Hopkins is a law firm that is providing third party legal services for many schools around the country who have had their data breached. We can use these services for this specific event. We can also work with our own legal counsel regarding the PowerSchool data breach.

Karen Bridges
Direct Dial: 312.642.7127
E-mail: kbridges@mcdonaldhopkins.com

January 28, 2025

VIA EMAIL (vance.lee@capitantigers.org)

Vance Lee | Superintendent
Capitan Municipal Schools
P.O. Box 278
Capitan, NM 88316

Re: Engagement Terms: PowerSchool Vendor Incident

Dear Mr. Lee:

Thank you for selecting McDonald Hopkins PLC to assist in analyzing and responding to the PowerSchool vendor incident at Capitan Municipal Schools. We appreciate the opportunity to act as legal counsel for Capitan Municipal Schools to evaluate your legal obligations to notify individuals or regulators regarding the incident that may have resulted in disclosure of personal and/or health information. This is a contract for legal services and an effort to explain to you both the financial aspects of the attorney-client relationship, and the responsibilities and expectations of both parties to the relationship. Please examine this letter carefully and let me know immediately if you have any questions or concerns before you sign it. No work will be performed on this matter and no attorney-client relationship is established until you have signed and returned this agreement.

Fees. Allison Spears and I will be the attorneys principally responsible for this matter. As appropriate, we may delegate work to other attorneys or legal assistants. Each attorney and legal assistant charges an hourly rate for his or her work. Work is billed in a minimum of six-minute increments. Because you are insured by Beazley, you will receive the benefit of the Beazley Preferred Rates. Our Beazley Preferred Rate for Members is \$395 and our Beazley Preferred Rate for Associates is \$295. If the Firm increases its hourly rates at any time during the course of this representation, the higher rates shall be deemed substituted for the initial rates described in this fee agreement.

We will make every effort to perform our services in a cost-efficient manner, including using services of people with the lowest rates who are capable of performing the task. These rates are subject to periodic and discretionary adjustment. We are often asked to estimate the total fees and expenses that may be charged for a matter. While we will attempt to give you a reasonable estimate based on past experience and what we might anticipate in this instance, unless we agree in writing otherwise, any such estimate does not represent a maximum, minimum or fixed-fee quotation. Ultimate fees and expenses may be more or less than the amount estimated.

Expenses. All expenses that this Firm advances or incurs in connection with this matter shall be reimbursed to us at our actual cost. Expenses which are to be reimbursed include, but are not limited to, filing fees, service fees, document procurement, photocopy charges, messenger fees, long distance telephone and fax charges, computer research charges, court reporter charges, expert and witness fees and, where necessary, travel, mileage, parking and accommodation expenses. These expenses will be identified and invoiced with each monthly bill. In the case of expert witnesses or other expenses that exceed \$1,000, we reserve the right to submit those fees directly to you for payment. Please note that any failure to pay expert witnesses will likely result in their refusal to perform any work and may severely prejudice the success of your matter.

Invoices. You and Beazley will receive a monthly bill detailing the work that was performed on this matter, the identity of the person performing the work, the amount of time spent, the charge for that time and a description and amount of any expenses incurred. If you have any concerns about our representation or any bill, we ask you to notify us right away. We will try to resolve any such concerns to everyone's satisfaction. Invoices are due upon receipt. You agree to timely pay us for any fees or expenses invoiced and not covered by Beazley.

What you should expect from us. The Firm will work diligently on this matter and will promptly keep you, or someone you designate, informed regarding the progress of your matter.

You should expect to be treated with respect and courtesy from all members of the Firm and you should promptly inform us of any transgression on our part.

We cannot guarantee the outcome of this matter. We shall advise you of the recommended technical and legal tactical issues as they arise so you may continue to evaluate whether and how you wish to continue the legal representation. However, attorneys are subject to independent ethical obligations and an attorney is not obligated to pursue objectives or employ means simply because the client may wish the attorney do so if the attorney would be violating another duty by pursuing the requested action.

Generally, the information clients give to our Firm is subject to the attorney-client privilege. You should be aware that attorneys are under an independent ethical duty to reveal privileged information, such as illegal or fraudulent acts committed by clients in the course of the attorney-client relationship, the intention of the client to commit a crime, or when the lawyer is required to divulge the information by law or court order.

What we expect from the Client. In order for an attorney-client relationship to work effectively, the Client must be truthful in all discussions with us, even if, and especially when, they think the information is hurtful to the company's matter. We need to have all information in a timely manner. If we are missing part of the picture, we cannot represent a Client effectively.

Files and Records. When the Firm's services are concluded or terminated, the Firm will close its file on the matter. At the time of closing or thereafter, you have the right to review the file and/or have a copy of anything from it you wish to retain, with the exception of the personal notes and memorandums of the legal staff, for a reasonable per page copy cost and, if in off-site storage, our retrieval cost. If a Client owes the Firm for expenses or fees, the Firm is not required

to release the Client's file provided certain ethical requirements are met. The file will be maintained as long as legally required, but in no case can the Client expect that the Firm will keep the file beyond three (3) years after the representation of the Client in that matter has ended. Thereafter, the file may be destroyed without further notice to the Client. NOTE: This is the only notice you will receive regarding future destruction of your file. Please note that we reserve the right to maintain the closed file in an electronic format only and to destroy the hard copy of the file.

Discontinuing or Withdrawing from the Representation. The services of the Firm may be discontinued by the Client at any time. Note that in a litigation matter, your ability to substitute counsel may be subject to court approval. Under certain circumstances, the court may not grant the substitution of counsel or agree to delay the proceeding to accommodate the hiring of new counsel.

The Firm reserves the right to withdraw from this representation if invoices are not paid on a timely basis or retainers are not replenished per this agreement or if there has been a breakdown of the attorney-client relationship.

Discontinuing the representation does not affect the Client's responsibility to pay for the legal services rendered and the expenses incurred up to the date of termination.

You are engaging our Firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after the completion to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise you with respect to future legal or other developments.

Conflicts. Before preparing this engagement letter, we conducted an internal check of our records to determine whether or not a conflict existed with one or more of our existing clients. Based on that check, it appears no such conflict exists.

Under our profession's Rules of Professional Conduct, we must have undivided loyalty to our clients. This requirement means that an attorney must refuse to accept or continue employment if the interest of another client may impair the independent professional judgment of the attorney. In this regard, McDonald Hopkins PLC represents many other companies and individuals. It is possible that during the time we are representing you, some of our present or future clients will have disputes or transactions with you. As a result of these disputes or transactions, conflicts of interest may arise, and when they do, we will address them with you in a manner consistent with our obligations under the Rules. In circumstances in which the Rules relating to conflicts dictate that we do not represent the other client, we will not do so. In circumstances in which a waiver may be solicited, we may solicit a waiver from you. In circumstances in which a waiver is not required, we may represent the other client. We will protect, however, as required by these Rules, your confidential information or documents entrusted to our care.

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Court awarded fees. If the court should order payment directed to you of attorneys fees by a third party, all court awarded fees will first be applied to any outstanding bill for fees and expenses owed to the Firm.

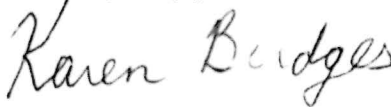
Attorney's Lien. The Firm shall have a lien on all funds obtained by judgment, settlement or award for all unpaid fees and expenses generated pursuant to this agreement.

Entire Agreement. This agreement is complete in its entirety between the Firm and the Client and supersedes all other verbal or written agreements. It may be modified only in writing signed by both a representative of the Firm and the Client. Any part of this agreement shall be severable and remain in effect if any other part or parts are held unenforceable for any reason.

If you are in agreement with the terms of this letter, please sign where indicated below and return to me. As always, please advise should you have any questions or concerns. We appreciate the opportunity to work with you on this important matter.

NOTE: By the signature below, you acknowledge that you have read this Agreement, understand its contents, and have had any questions answered to your satisfaction.

Very truly yours,



Karen Bridges

KB/ar

Agreed to as of _____, 2025

CAPITAN MUNICIPAL SCHOOLS

By: _____

Vance Lee

Superintendent