

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

May 5, 2009

**CHANGE NOTICE NO. 1
 OF
 CONTRACT NO. 071B8200303
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Brustein & Manasevit 3105 South St., NW Washington, DC 20007	TELEPHONE: (202) 965-3652 Michael Brustein
Mbrustein@bruman.com	BUYER/CA (517) 241-0684 Brian Kloeckner
Contract Compliance Inspector: Raymond Howd, Division Chief (517) 373-7700 SAAG Services – Michigan Department of Education/Department of Attorney General	
CONTRACT PERIOD: From: April 1, 2008 To: March 31, 2011	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGE(S):

Effective April 7, 2009, this Contract is hereby EXTENDED to March 31, 2011, and INCREASED by \$200,000.00. All other terms, conditions, specifications, and pricing shall remain the same.

AUTHORITY/REASON:

Per request of the Department of Education (PRF dated 3/11/09), Attorney General approval (letter dated 2/20/09), Ad Board approval on 4/7/09, and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$375,000.00

071B8200303

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
LEGAL SERVICES CONTRACT

MICHAEL A. COX, Attorney General of the State of Michigan (Attorney General), and the Department of Attorney General (the "Department") retain and appoint Brustein & Manasevit, to provide legal services through the appointment of the following firm attorneys as Special Assistant Attorneys General (SAAGs): Michael Brustein and Leigh Manasevit.

The legal services provided to the State of Michigan, Department of Education will be pursuant to the following terms and conditions in this Contract:

1. **PARTIES/PURPOSE**

1.1 **Parties.** The parties to this Contract are the Department of Attorney General and Michael Brustein and Leigh Manasevit of Brustein & Manasevit.

The Department of Education is also a party to this Contract. It agrees to pay all fees and costs associated with the legal services rendered after review and approval by the Department.

1.2 **Purpose.** The Department and the SAAGs' agree that the SAAGs will provide legal services relative to the federal Office of Inspector General's audit report of the Detroit Public Schools; matters involving federal regulatory compliance under the No Child Left Behind Act, Individuals with Disabilities Education Act, and other federal statutes and procedures; training to Department of Education staff; and other related, complex federal education matters. The SAAGs are to work only on the audit report and other matters described in this paragraph, and all settlements or other resolutions are to be approved in advance by the Department and the Department of Education.

2. **TERM OF CONTRACT**

The initial term of this Contract is from April 1, 2008 to September 30, 2009. This contract may be extended at the option of the Department upon thirty (30) calendar days written notice.

3. **COMPENSATION FOR SERVICES PROVIDED**

3.1 The total amount of compensation for services and expenses during the term of this Contract shall not exceed the budget ceiling set forth in paragraph 4.1 of this Contract, unless otherwise amended by a Contract addendum.

3.2 The cost for overhead, secretarial and clerical employees or office supplies utilized by the SAAGs are part of the SAAGs' agreed upon fees and such costs will not be separately billed. No additional charges shall be allowed, except by prior written permission of the Department.

3.3 Payment for services and reimbursement for expenses incurred shall be the obligation of the Department of Education.

3.4 The SAAGs are to be paid directly by the Department of Education, after review and approval by the Attorney General of all invoices, for all services rendered including but not limited to: representation in judicial or administrative proceedings, research consultation, preparation of documents and negotiations with entities or persons as requested by the Attorney General. The compensation rate for these services will be \$200.00 per hour, provided that not more than eight hours of service will be approved for any calendar day on which services are rendered unless the services are for time actually spent in trial in which case no more than ten hours of fees for such time will be approved.

No payment will be made by the Department of Education unless the services listed on the invoice are reviewed and approved by the Department (see Billing for Hourly Services, paragraph 4.2 as being reasonably necessary to the proper representation of the State and which are required to advance that representation.

4. CONTRACT BUDGET, BILLING AND REIMBURSEMENT

4.1 Budget Ceiling. A budget ceiling of Seventy-five thousand dollars and No/100 (\$75,000.00) is established to cover all services and expenses performed or incurred in the performance of this Contract. Due to the nature of this Contract and the difficulty in estimating actual costs and the demand for services, the Contract budget ceiling may be increased, if approved in advance and in writing by the Department. An increase in the budget ceiling shall not affect the established hourly rate during the term of this Contract or any amendment.

4.2 Billing for Hourly Services. The SAAGs shall bill the Department of Education on a monthly basis. The billing format must indicate the nature of the work performed, time devoted, the individual performing the work, and the billing amount. Additional information shall be provided if requested by the Department. A copy of all invoices shall be furnished to Raymond O. Howd, Division Chief.

The hourly rate to be charged for the SAAGs' work is: Michael Brustein - \$200.00; Leigh Manasevit - \$200.00.

The SAAGs need to get prior written authorization from Raymond O. Howd to hire an expert witness.

The Department shall not pay for travel time, waiting time or other time not spent actively performing services under the Contract.

4.3 Reimbursement for Actual Expenses. Actual litigation costs (filing fees, depositions, and postage) may be reimbursed upon presentation to the Department of Education in accordance with the procedures provided in this Contract. The SAAGs will provide original copies of all receipts for meals, lodging and travel reimbursement with their billings. Allowable expenses shall be specifically and individually identified at the end of the bill, resulting in a total

cumulative statement with attached original receipts. The Department reserves the right to deny reimbursement of any expenses for which approval was not sought pursuant to this Contract.

The SAAGs will be reimbursed for meals, lodging, and travel expenses in accordance with the State of Michigan travel and other expense requirements, which can be found at http://www.michigan.gov/dmb0,1607,7-150-9141_13132---,00html. The SAAGs acknowledge that they have reviewed the State travel rates posted on the website. All out-of-state travel requires the written approval of the Department. Expenses exceeding State rates will not be reimbursed.

4.4 Registration. The SAAGs are required to register as a vendor and complete the electronic funds transfer (EFT) process, as the required method of payment under this Contract, through the Michigan Department of Management and Budget (DMB). The SAAGs' (vendor) and EFT registration must be completed through the DMB Contract and Payment Express website at www.cpexpress.state.mi.us.

4.5 Billing and Payment Deadlines. All invoices shall be paid on a current basis, within 30 days after receipt of satisfactory billing submission, unless the parties agree on another arrangement. The SAAGs shall complete all work in fiscal year 2008 by September 30, 2008 and submit all payment requests no later than October 7, 2008. Work performed in fiscal year 2009 shall be completed by September 30, 2009 and the SAAGs shall submit all payment requests no later than October 7, 2009.

5. REPRESENTATIONS

5.1 Qualifications. The SAAGs, by signing this Contract, attest that they are qualified to perform the services specified in this Contract and agrees to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

5.2 Conflict of Interest. The SAAGs represent that they have conducted a conflicts check prior to entering into this Contract and no conflicts exist with the proposed legal services. Brustein & Manasevit, Michael Brustein, and Leigh Manasevit shall not undertake the representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the Department of Education, unless the SAAGs obtain prior written approval to do so from both the Department of Education and the Attorney General. This provision does not prohibit the SAAGs, nor any member of Brustein & Manasevit from representing a client and engaging in litigation against the State of Michigan, its agencies or its employees so long as the litigation has no relation to the subject matter of this Contract and is not adverse to the Department of Education.

With respect to potential conflicts of interest, other lawyers in the SAAGs' firm shall be advised of the SAAGs' representation of the Department of Education, and that the firm has agreed not to accept, without prior written approval from the Department of Education and the Department, any employment from other interests related to the subject matter of this Contract. Brustein & Manasevit shall carefully monitor any significant change in the assignments or clients of the firm in order to avoid any situation which might affect its ability to effectively render legal services to Department of Education.

5.3 Services to be Confidential. The SAAGs shall keep confidential all services and information, including records, reports and estimates. The SAAGs shall not divulge any information to any person other than to authorized representatives of the Department and Department of Education, except as required by testimony under oath in judicial proceedings, or as otherwise required by law. The SAAGs shall take all necessary steps to ensure that no member of his or her firm divulges any information concerning these services. This includes, but is not limited to, information maintained on the SAAGs' computer system.

All files and documents containing confidential information shall be filed in separate files maintained in the office of Brustein & Manasevit with access restricted to each SAAG and needed clerical personnel. All documents prepared on the Brustein & Manasevit computer system shall be maintained in a separate library with access permitted only to each SAAG and needed clerical personnel.

5.4 Assignments and Subcontracting. The SAAGs shall not assign or subcontract any of the work or services to be performed under this Contract without the prior written approval of the Department.

5.5 Facilities and Personnel. The SAAGs have and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

5.6 Advertisement. The SAAGs, during the term of appointment and thereafter, shall not advertise their position as a Special Assistant Attorney General to the public. The SAAGs designation may be listed on the SAAGs' resume or other professional biographical summary, including resumes or summaries that are furnished to professional societies, associations or organizations. Any such designation by the SAAGs must first be submitted to and approved by the Department, after consultation with Department of Education.

5.7 Records. The SAAGs shall maintain complete billing records. This requirement applies to all information maintained or stored in the SAAGs' computer system. The records shall be kept in accordance with generally accepted accounting practices and sound business practices. The Department and Department of Education, or their designees, shall have the right to inspect all records of the SAAGs related to this Contract.

5.8 Non-Discrimination. The SAAGs, in the performance of this Contract, agree not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and any breach of the Act may be regarded as a material breach of the Contract. The SAAGs agree to comply with the provisions of the Federal Civil Rights Act of 1964, 42 USC §2000d, in performing the services under this Contract.

5.9 Unfair Labor Practices. The State shall not award a contract or subcontract to any employer or any subcontractor, manufacturer or supplier of the employer, whose name appears in the current register compiled by the Michigan Department of Labor and Economic Growth (DLEG). The State may void this Contract if after the award of the Contract, the name of the SAAGs or their law firm appears in the register. 1980 PA 278, MCL 423.321 *et seq.*

5.10 Compliance. The SAAGs' activities pursuant to this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association.

5.11 Independent Contractor. The relationship of the SAAGs to the Department and the Department of Education in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. The SAAGs and Brustein & Manasevit will be solely and entirely responsible for their acts and the acts of Brustein & Manasevit's agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the requirements of the attorney-client privilege.

6. MANAGEMENT OF CASE(S)

6.1 Scope of Representation. Upon acceptance of any case, the SAAGs will promptly undertake all efforts as requested by the Attorney General or his designee and shall prosecute any case to its conclusion, unless directed to the contrary by the Attorney General or his designee.

6.2 Notifications. The SAAGs shall direct all notices, correspondence and inquiries, billing statements, pleadings and other documents mentioned in this Contract to the attention of the Department of Attorney General, Education & Social Services Division. The Division Chief of the Education & Social Services Division is the Department's and the Attorney General's designee for this Contract, unless notice of another designation is received from the Attorney General. The Division Chief may designate an Assistant Attorney General in the Education & Social Services Division to oversee the day to day administration of the Contract.

For the Department:

Raymond O. Howd, Division Chief
Michigan Department of Attorney General
Education & Social Services Division
P.O. Box 30758
Lansing, MI 48909
Telephone: (517) 373-7700
Fax: (517) 335-1152

For the SAAGs:

Michael Brustein
Brustein & Manasevit
3105 South St., NW
Washington, DC 20007
Telephone: (202) 965-3652
Fax: (202) 965-8913
E-mail: Mbrustein@bruman.com

6.3 The SAAGs shall promptly inform the Education & Social Services Division of the following developments as soon as they become known:

- A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.
- B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by the SAAGs shall accompany this disclosure.

For every case accepted, the SAAGs shall:

- A. Promptly undertake all efforts, including legal proceedings, as directed by the Education & Social Services Division, and shall prosecute any case to its conclusion unless directed to the contrary by the Education & Social Services Division.
- B. Provide copies of all pleadings filed in any court by the SAAGs, or by the opposing party, to the Education & Social Services Division.

6.4 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the Education & Social Services Division for review and approval for filing with the court.

6.5 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Division Chief, use of investigative subpoenas must be thorough and aggressive. The Education & Social Services Division may request investigative subpoenas in addition to what the SAAGs have filed.

6.6 Discovery Requests. The SAAGs will consult with the Education & Social Services Division and assist in the preparation of answers to requests for discovery. The SAAGs will indicate those requests to which they intend to object.

6.7 Witness and Exhibit Lists. At least ten (10) calendar days prior to the day a witness list or an exhibit list is due, the Education & Social Services Division should receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.

6.8 Mediation. Fifteen (15) calendar days prior to any mediation, the mediation summary should be submitted to the Education & Social Services Division for review and recommendation. Immediately following mediation, the SAAGs shall submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

6.9 Trial Dates. The SAAGs shall advise the Education & Social Services Division immediately upon receipt of a trial date.

6.10 Settlements. All pleas/settlements are subject to approval by the Department. The SAAGs must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's designee in the Education & Social Services Division. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

6.11 Money. The SAAGs shall only accept payment by an opposing party under the following terms:

A. Restitution should be handled as ordered by the court or agreed to in a settlement/plea agreement. The SAAGs shall require the payment ordered by the court or by plea/settlement:

- i. be made by check, certified check, cashier's check, or money order;
- ii. payable to the "State of Michigan;"
- iii. include the tax identification number/social security number of the payer; and
- iv. include the account to which the remittance is to be applied.

B. Any funds received by the SAAGs as payment on a case assigned pursuant to court order, plea/settlement shall be transmitted by the SAAGs to the Education & Social Services Division within seventy-two (72) hours of receipt.

6.12 File Closing. The SAAGs must advise the Education & Social Services Division, in writing, of the reason for closing a file (*e.g.*, whereabouts unknown, no assets, bankruptcy, payment in full, or settlement). Requests for reimbursement of legal services (see paragraph 4.2) and expenses (see, paragraph 4.3) shall be submitted simultaneously with the closing memorandum.

6.13 File Retention. The Education & Social Services Division shall retain all closed files in accordance with its retention schedule.

6.14 Recall of Cases. Upon issuing a written Notice of Recall, the Education & Social Services Division may recall any file, at any time, without cause from the SAAGs. The SAAGs will be paid for actual services rendered prior to the recall. No payments under this section shall exceed the amount payable under the Budget Ceiling of this Contract, see paragraph 4.1 above.

Upon a Notice of Recall and except as otherwise directed by the Attorney General or his designee, the SAAGs shall:

- A. stop working under the Contract on the date specified in the Notice of Recall;
- B. obligate no additional Contract funds for any costs beyond such date as the Attorney General or his designee shall specify;
- C. on the date the recall is effective, submit to the Education & Social Services Division all records, reports, documents and pleadings as the Attorney General shall specify and carry out such directives as the Attorney General or his designee may issue concerning the safeguarding and disposition of files and property; and
- D. submit, within thirty (30) calendar days, a closing memorandum and final reimbursement billing.

7. INDEMNIFICATION

The SAAGs agree to save harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:

- A. Any malpractice, negligent or tortuous act or omission attributable, in whole or in part, to the SAAGs or any of his employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAGs now existing, or hereafter created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the SAAGs, to perform their obligations either expressed or implied by this Contract.

8. INSURANCE

8.1 Errors and Omissions. The SAAGs or their law firm shall maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

8.2 Certificates of Insurance. Certificates evidencing the purchase of insurance shall be furnished to the Department, and Education & Social Services Division, upon request. All

certificates are to be prepared and submitted by the insurance provider and shall contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) days for non-payment of premium, and any such notice of cancellation, material change, or non-renewal shall be promptly forwarded to the Department upon receipt.

8.3 Additional Insurance. If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits, the SAAGs will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract shall be acquired at the expense of the SAAGs or their law firm, under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

9. APPEALS

The SAAGs agree that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAGs agree that no petition for *certiorari* will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.

In all matters where an appeal to the Court of Appeals is taken by another party or an appeal should be considered from an adverse decision of the trial courts, the SAAGs shall immediately notify the Education & Social Services Division by providing a written summary of the case including facts, issues, copy of and analysis of the court's decision, and an analysis of the State's position on appeal.

The decision whether the SAAGs are authorized to prosecute or defend an appeal will be made on a case by case basis.

10. TERMINATION OF CONTRACT AND APPOINTMENT

10.1 SAAGs Termination. The SAAGs may terminate this Contract upon thirty (30) days written notice (Notice of Termination). Upon delivery of such notice, the SAAGs shall continue all work and services until otherwise directed by the Education & Social Services Division. The SAAGs will be paid for actual services rendered prior to termination, and for actual services as may be directed by the Department. No payments under this section shall exceed the budget ceiling amount established in paragraph 4.1 of this Contract.

10.2 Attorney General Termination. The Department may terminate this Contract and the SAAGs' appointments, at any time and without cause, by issuing a Notice of Termination to the SAAGs.

10.3 Termination Process and Work Product. Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or his designee, the SAAGs shall:

- A. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- B. incur no costs beyond the date specified by the Department;
- C. on the date the termination is effective, submit to the Education & Social Services Division all records, reports, documents and pleadings as the Department shall specify and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and
- D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the "Work Product") prepared by the SAAGs under this Contract, shall become the exclusive property of the Department, free from any claims on the part of the SAAGs except as herein specifically provided. The Work Product shall promptly be delivered to the Education & Social Services Division. The SAAGs acknowledge that any intentional failure or delay on its part to deliver the Work Product to the Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAGs accordingly agree that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department shall have full and unrestricted use of the Work Product for the purpose of completing the services. In addition, each party will assist the other party in the orderly termination of the Contract.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

11. GENERAL PROVISIONS

11.1 Governing Law and Jurisdiction. This Contract shall be subject to and construed according to the laws of the State of Michigan, and no action shall be commenced against the Department or the Attorney General or his designee, agents or employees, or the Department of Education and its agents or employees, for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

11.2 No Waiver. A party's failure to insist on the strict performance of this Contract shall not constitute waiver of any breach of the Contract.

11.3 Additional SAAGs. It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services.

11.4 Other Debts. The SAAGs agree that they are not, and will not become, in arrears to the State of Michigan upon any contract, debt, or other obligation to the State of Michigan, including taxes.

11.5 Invalidity. If any provision of this Contract or the application thereof to any persons or circumstances shall, to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

11.6 Headings. Contract section headings are for convenience only and shall not be used to interpret the scope or intent of this Contract.

11.7 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

11.8 Amendment. No amendment to the Contract shall be effective and binding upon the parties, unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

11.9 Issuing Office. This Contract is issued by the Department, and is the only state office authorized to change the terms and conditions of this Contract.

Dated: 4/30/08



Michael Brustein
Brustein & Manasevit

Dated: 4/30/08



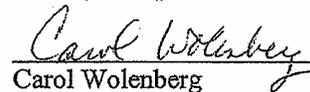
Leigh Manasevit
Brustein & Manasevit

Dated: 7/17/08



Michael A. Cox, Attorney General
or His Designee
Michigan Department of Attorney General

Dated: 5/27/08


Carol Wolenberg
Deputy Superintendent
Department of Education