

## **AGREEMENT FOR MUNICIPAL ADVISOR SERVICES**

This Agreement for Municipal Advisor Services (“Agreement”) has been entered on July 1, 2023 by and between the Alum Rock Union Elementary School District (“District”) and Dale Scott & Co., Inc. (“Municipal Advisor”).

**WHEREAS**, the District desires independent municipal advisory services to be performed in connection with the issuance of bonds and debt obligations (“Financing Services”); and

**WHEREAS**, the Municipal Advisor is registered, qualified and licensed, including as a municipal advisor under Section 15B of the Securities Exchange Act of 1934, to provide Financing Services to the District.

**NOW, THEREFORE**, in consideration of the above recitals and the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

### **Section 1. Financing Services.**

As directed by the District, Municipal Advisor will provide services (“Financing Services”) in connection with the completion of one or more debt financings as more specifically described in *Exhibit A* hereto. Financings may include, without limitation, general obligation bonds, certificates of participation or lease financings, bond anticipation notes, tax and revenue anticipation notes, and refunding of debt (“Debt Financing”). Municipal Advisor shall act as a fiduciary to the District in the performance of the Financing Services and Additional Services (defined below).

### **Section 2. Additional Services.**

Financing Services performed for the District by Municipal Advisor that are not otherwise specifically identified in *Exhibit A* to this Agreement shall be additional services (“Additional Services”) performed for additional compensation at the direction of the District. Additional Services include, but are not limited to, the following:

- 1.01 Assisting District with the calling of a bond election.
- 1.02 Assisting the District in obtaining enabling legislation.
- 2.02 Financial management services, including development of financial policies and/or administrative regulations, capital improvement plans, economic development planning, credit analysis (other than preparation for rating agency presentations that may be part of the Financing Services).
- 2.03 If so requested, design and draft a random survey of registered voters of the District and a survey of District teachers and staff members, incorporating comments from the District, coordinating the gathering of data, and analyzing and presenting the results to the District.
- 2.04 If so requested, assist the District in the initial planning process related to the development of Teacher Staff Housing.

2.05 If so requested, assist the District in regards to its Independent Citizens' Oversight Committee ("ICOC") with member recruitment, member education, annual reports to the Board and the community, and bylaws review and compliance.

2.06 Services rendered in connection with any undertaking of the District relating to a continuing disclosure agreement entered into in order to comply with Securities and Exchange Commission Rule 15c2-12 or other similar rules.

### **Section 3. Compensation.**

3.01 For Municipal Advisor's performance of Services and Additional Services, the Municipal Advisor's compensation will be as provided *Exhibit B* hereto, plus Municipal Advisor's expenses incurred in rendering such Services and Additional Services. Municipal Advisor's expenses may include, but are not limited to travel, telephone/conference calls, postage, courier, database access services, and printing.

3.02 Municipal Advisor shall submit monthly invoices for payment for Additional Services provided pursuant to Section 2 of this Agreement unless an alternate date or dates have been specifically agreed to in writing. Unless otherwise specified, payment of Municipal Advisor's compensation and expenses is due thirty (30) days after submission of Municipal Advisor's invoice for services.

### **Section 4. Personnel.**

Municipal Advisor has sufficient qualified and licensed personnel available to perform the Financing Services under this Agreement. District's lead contact person for this Agreement shall be Dale Scott. Municipal Advisor shall make available other qualified personnel of the firm as may be required to complete Municipal Advisor's Financing Services or Additional Services. The District has the right to approve or disapprove any proposed changes in Municipal Advisor's staff providing Financing Services or Additional Service to the District.

### **Section 5. Term of Agreement.**

5.01 This Agreement shall commence on July 1, 2023 and shall continue in full force and effect through June 30, 2025, unless terminated sooner by either party in accordance with this Agreement. The term of this Agreement may be extended for up to two additional terms of one year in duration, as agreed by the District and the Municipal Advisor in writing and subject to ratification or approval of the District's governing board.

5.02 Either Party may terminate this Agreement without cause upon 30 days' written notice to the non-terminating Party. Upon such termination, Municipal Advisor shall promptly submit a final invoice for any Financing Services or Additional Services for which compensation hereunder has not been paid. In the event that District terminates this Agreement pursuant to this section, District shall compensate Municipal Advisor for any Financing Services or Additional Services satisfactorily completed to the date of termination and for which an invoice is provided. Upon termination, Municipal Advisor shall provide the District with all documents produced, maintained or collected by Municipal Advisor pursuant to this Agreement, whether or not such documents are final or draft documents.

**Section 6. Assignment.**

The rights and obligations of the District under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the District. This Agreement may not be assigned by the Municipal Advisor without the prior written consent of the District.

**Section 7. Market Disclosure.**

Municipal Advisor does not assume the responsibilities of the District or the responsibilities of the other professionals and vendors representing the District, such as bond underwriters, in the provision of Financing Services and the preparation of the financing documents, including initial and secondary market disclosure. Information obtained by Municipal Advisor for inclusion in any disclosure documents shall be provided from credible sources which Municipal Advisor in its expertise reasonably believes are accurate.

**Section 8. Confidentiality.**

The Municipal Advisor agrees that all financial, statistical, personal, technical and other data and information designated by the District as confidential shall be protected by the Municipal Advisor from unauthorized use or disclosure.

**Section 9. Indemnification.**

The Municipal Advisor shall indemnify and hold harmless the District, its governing board, employees, officers, and agents from and against any and all losses, claims, damages, expenses, including legal fees for defense, or liabilities, collectively, damages, to which District may be subjected by reason of Municipal Advisor's acts, errors or omissions arising out the performance of the Financing Services and the Additional Services; provided, however, that Municipal Advisor shall not indemnify the District from or against damages arising from the intentional or willful misconduct of the District.

**Section 10. Insurance.**

10.01 Municipal Advisor shall maintain workers' compensation and employer's liability insurance during the term of this Agreement.

10.02 Municipal Advisor, at its own expense, shall obtain and maintain insurance at all times during the prosecution of this contract. Such insurance must be written with a Best Guide "A"-rated or higher insurance carrier admitted to write insurance in the state where the work is located.

10.03 Certificates of insurance naming the District as an additional insured shall be submitted to the District evidencing the required coverages, limits and locations of operations to which the insurance applies, and the policies of insurance shall contain a 30 day notice of cancellation or non-renewal.

10.04 Insurance coverages shall not be less than the following:

A. Workers' Compensation

1. State worker's compensation statutory benefits
2. Employer's Liability- policy limits of not less than \$1,000,000.

B. Commercial General Liability coverage with policy limits of not less than \$1,000,000 combined single limit for bodily injury and property damage and including coverage for the following:

1. Premises operations
2. Contractual liability
3. Products
4. Completed operation

C. **Errors and Omissions.** While serving the District as the sole financial advisor, DS&C will self-fund professional liability claims with a secured line of credit up to \$1 million per claim and in the aggregate. Mutually agreeable written documentation may be maintained outside of this document.

#### **Section 11. Registration; Permits; Licenses.**

Municipal Advisor represents and warrants to the District (i) it is a “municipal advisor” (within the meaning of Section 15B of the Securities Exchange Act of 1934), (ii) has registered in accordance with Rules 15Bal-1 through 15Bal-8 and 15Bc4-1 of the Securities Exchange Commission (“SEC”), effective July 1, 2014, with the SEC and the Municipal Securities Rulemaking Board (“MSRB”), and (iii) all employee performing Financing Services under this Agreement are properly licensed and qualified to perform all Financing Services and Additional Services required or provided, and shall maintain in full force throughout the Term of this Agreement all registration, licenses, credentials, permits and any other legal qualifications required by law to perform the Financing Services and Additional Services and to fully and faithfully satisfy all of the terms set forth in this Agreement.

#### **Section 12. Other Terms.**

12.01 The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition contained herein.

12.02 All agreements, terms, provisions, conditions and covenants contained herein are severable and in the event any of them shall be held to be invalid, void, or unenforceable by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement, term, provision, condition or covenant was not contained herein, and the remaining agreements, terms, provisions, conditions and covenants of this Agreement shall not be affected by such determination and shall remain in full force and effect. This Agreement shall not fail because any part or any clause hereof shall be held invalid, void, or unenforceable.

12.03 Municipal Advisor represents and warrants to District that this Agreement has been duly authorized and executed by it and constitutes a valid and binding agreement of Municipal Advisor. This Agreement is not valid as against District unless and until it is approved/ratified by the District's Governing Board. Financing Services and Additional Services shall not be rendered hereunder until Agreement is so approved or ratified.

12.04 The validity, interpretation and construction of this Agreement and of each part hereof shall be governed by the laws of the State of California. Venue for any lawsuit or proceeding concerning this Agreement shall be properly initiated and maintained in Santa Clara County, California.

12.05 This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

**Section 13. Conflict of Interest**

Compensation contingent on the completion of a Debt Financing is customary for municipal advisors. To the extent that compensation to the Municipal Advisor is contingent on the issuance of a Debt Financing, a potential conflict of interest exists as Municipal Advisor would have an incentive to recommend that the District complete a Debt Financing that might be unnecessary. Municipal Advisor, in its duty as a financial fiduciary to the District, shall refrain from making recommendations to the District that are not in the District's best interest, and shall provide information to substantiate its recommendations to District.

**Section 14. Independent Contractor**

Municipal Advisor, in the performance of this Agreement, shall be and act as an independent contractor with the sole authority for controlling and directing the performance of the details of the Financing Services and Additional Services, District being interested only in the results obtained. Municipal Advisor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Municipal Advisor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Municipal Advisor's employees. If Municipal Advisor is not a resident of California and is not exempt from withholding, the District shall withhold California income taxes as required by the Revenue & Taxation Code. Municipal Advisor shall still be responsible for payment of all state and federal taxes.

**Section 15. Notices**

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT

Alum Rock Union Elementary School District  
2930 Gay Avenue  
San Jose, CA 95127  
[FAX]  
ATTN: Assistant Superintendent, Business  
Services

MUNICIPAL ADVISOR

Dale Scott & Co., Inc.  
548 Market Street, Suite 44410  
San Francisco, CA 94104  
ATTN: President

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

IN WITNESS Whereof, the parties have duly executed this Agreement as of the day and year first above set forth.

“DISTRICT”


ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

By: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

“MUNICIPAL ADVISOR”

DALE SCOTT & CO., INC.

By:  \_\_\_\_\_ Title: President

Date: \_\_\_\_\_

Approved by the Alum Rock Union School District Board of Trustees on \_\_\_\_\_

Item No. \_\_\_\_\_

## EXHIBIT A TO AGREEMENT

### DESCRIPTION OF SERVICES

#### **A. Performance of Services.**

The Municipal Advisor shall perform all the duties and services specifically set forth herein and shall provide such other services as it deems necessary or advisable, or are reasonable and necessary to accomplish the District's objectives in a manner consistent with the standards and practice of professional municipal advisors prevailing at the time such services are rendered to the District.

The District may, with the concurrence of Municipal Advisor, expand this Agreement to include any Additional Services not specifically identified within the terms of this Agreement. Any Additional Services may be described in an addendum to this *Exhibit A* and are subject to fees described in *Exhibit B* to this Agreement.

#### **B. Financing Services.**

The Municipal Advisor shall assume primary responsibility for assisting the District in coordinating the planning and execution of each Debt Financing during the Term. Insofar as the Municipal Advisor is providing Financing Services which are rendered only to the District, the overall coordination of the Debt Financing shall be such as to minimize the costs of the transaction coincident with maximizing the District's financing flexibility and capital market access. The Municipal Advisor's Financing Services shall include, but shall not be limited to, the following:

Specifically, Municipal Advisor will:

##### 1. Establish Financing Objectives.

Municipal Advisor shall review the District's financing needs and in conjunction with the District's staff, outline the objectives of each financing transaction to be undertaken and its proposed form. Municipal Advisor shall assess District's bonding capacity, as applicable, assist in development of bond authorization amounts and repayment and sizing scenarios. At District's direction, Municipal Advisor shall participate in meetings of the bond finance team as needed prior to the election.

##### 2. Develop the Financing Timetable.

The Municipal Advisor shall take the lead role in preparing a schedule and detailed description of the interconnected responsibilities of each team member and update this schedule, with refinements, as necessary, as the work on each Debt Financing progresses.

##### 3. Monitor the Transaction Process.

The Municipal Advisor shall have primary responsibility for the successful implementation of a Debt Financing. The Municipal Advisor shall coordinate in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of each Debt Financing. The Municipal Advisor shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the Debt Financing transaction.

4. Review the Official Statement.

Municipal Advisor shall review the official statement for each Debt Financing, if applicable, to ensure that the District's official statement is compiled in a manner consistent with industry standards.

5. Procure and Coordinate Additional Service Providers.

The Municipal Advisor may act as District's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if the District directs.

6. Provide Assistance on Financing Documentation.

The Municipal Advisor shall assist the managing underwriters, bond counsel and/or other legal Municipal Advisors in the drafting of the respective financing resolutions, notices and other legal documents for a Debt Financing. Municipal Advisor shall monitor document preparation for a consistent and accurate presentation of the recommended business terms and financing structure of each debt issue.

7. Sizing and Design Structure of Debt Issue.

The Municipal Advisor shall work with the District's staff to design a financing structure for each Debt Financing that is consistent with the District's objectives and debt management policies, industry best practices, and that coordinates each transaction with outstanding issues and that reflects current conditions in the capital markets.

8. Plan and Schedule Rating Agency Presentation and Investor Briefings.

The Municipal Advisor shall lead the development of a plan for presenting the issuance of a Debt Financing to rating agencies and the investor community. The Municipal Advisor shall schedule rating agency visits, if appropriate, to assure the appropriate and most knowledgeable rating agency personnel are available for the presentation and will develop presentation materials and assist the District officials in preparing for the presentations.

9. Conduct Credit Enhancement Evaluation and Procurement.

Upon the District's direction, the Municipal Advisor will initiate discussions with bond insurers, letter of credit providers and vendors of other forms of credit enhancements to determine the availability of and cost benefit of securing financing credit support.

10. Conduct Market Analysis and Evaluate Timing of Market Entry.

The Municipal Advisor shall provide regular summaries of current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the District's proposed Debt Financing. The Municipal Advisor shall perform a thorough evaluation of market conditions preceding the negotiation of the terms of the sale of debt and will assist the District with the negotiation of final issue structure, interest rates, interest cost, reoffering terms and gross underwriting spread and provide a recommendation on acceptance or rejection of the offer to purchase the debt.



11. Provide Pre-Closing and Closing Activities.

The Municipal Advisor shall assist in arranging for the closing of each Debt Financing. The Municipal Advisor shall assist bond counsel in assuming responsibility for such arrangements as they are required, including arranging for or monitoring the progress of bond printing, qualification of issues for book-entry status, executing or orchestrating execution of closing certificates, and signing and final delivery of the securities and settlement of the costs of issuance.

**EXHIBIT B**  
**MUNICIPAL ADVISOR COMPENSATION**

*Fees and Expenses*

**Part 1: Fee for Financing Services**

Financing Services performed pursuant to Section 1 of this Agreement, and as more fully described in the Scope of Services set forth in *Exhibit A*, will be billed for at the amounts set forth below.

- **Bond Issuance Services:** For services related to the planning and issuance of general obligation bonds, certificates of participation, bond anticipation notes, facilities bonds, and refinancings (refundings): a fee of \$65,000 per transaction. Fees for subsequent financings from the same bond authorization issued on the same day will be reduced to \$0.
- **Pre-Election:** Should the District require DS&C’s assistance in preparing either a general obligation bond or a parcel tax measure to be placed before voters: a one-time fee of \$15,000 per measure.
- **Voter Survey Research:** Should the District request DS&C to undertake voter survey research: a fee of \$15,000 per survey for preparation and analysis plus third-party data collection services billed at cost payable upon the completion of the survey.
- **District Employee Survey Services:** Should the District request a District Employee Services Survey: a fee of \$0 (plus expenses).
- **Teacher-Staff Housing Initial Planning and Implementation Assistance:** Should the District request DS&C to assist the District in the initial planning process related to the development of Teacher Staff Housing: payable in an amount not to exceed \$2,000 per month with a maximum of \$24,000 per year.
- **Independent Citizens’ Bond Oversight Committee Assistance:** At the discretion of the District, for a single GO bond authorization: an annual fee of \$15,000 plus expenses and \$5,000 for each additional GO bond authorization.
- **Tax & Revenue Anticipation Notes:** Services related to the issuance of an individual tax and revenue anticipation note of the District: a fee of \$15,000 per transaction.
- **Continuing Disclosure/ADTR:** Should the District wish to use DS&C to file annual continuing disclosure (“CD”) reports with MSRB and ADTR reports with the State of California: a fee of \$5,000 per annual filing and \$500 per ADTR filing.

Payment of fees earned by Municipal Advisor pursuant to this Part 1 shall be contingent on, and payable at the closing of the Debt Financing issue(s) undertaken to finance the Project. Only fees incident to debt issuance services may be paid from proceeds of the related debt.

**Part 2: Fee for Other Services**

Unless agreed to otherwise, Additional Services, or services not described in Exhibit A, shall be performed at the following hourly rates. The table below reflects the rates in effect as of the date of execution of this Agreement.

- **Hourly Rate:** DS&C’s hourly rates are set forth below. These rates only apply for additional tasks not covered under the services above.

President	\$300
Senior Municipal Analyst	\$275
Municipal Advisor	\$200
Senior Associate Analyst	\$150
Associate Analyst	\$95
Clerical	\$50

**Part 3: Expenses**

Expenses will be billed separately and will cover, among other things, travel, lodging, subsistence, overnight courier, conference call, computer, and fax transmission charges for a maximum of \$5,000 per transaction. Advances made on behalf of the District for costs of preparing, printing or distributing disclosure materials or related matter whether by postal services or electronic means, may also be billed through to the District upon prior authorization.