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AGREEMENT NO. 01-25/26

AGREEMENT BETWEEN THE ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT AND HARVEY M. ROSE ASSOCIATES, LLC

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT ("District"), acting by and through its Board of Trustees ("Board") and HARVEY M. ROSE ASSOCIATES, LLC, a California corporation located at 1390 Market St, STE 1150, San Francisco, CA 94102 ("Consultant").

WHEREAS, District requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the District in providing as-needed performance, financial, compliance, construction, and information technology (IT) audit and consulting services; and

WHEREAS, District staff shall subsequently issue Requests to the Consultant to provide as-needed performance, financial, compliance, construction, and information technology (IT) audit and consulting services; and

WHEREAS, the District requires proposals from the Consultant in response to Requests; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to District; and

WHEREAS, District does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to District, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between District and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the District, or any other governmental entity.

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C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Board of Trustees or their designee, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to District and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Board's written request, Consultant shall supply District with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY DISTRICT

A. District shall furnish Consultant, upon its request, all documents and papers in possession of District which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Board of Trustees, or the Superintendent if so designated by Board action or Board Policy, is the contract administrator for District and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 10 (Termination) hereof.

C. Consultant shall provide Board with reasonable advance written notice if it or any of its subconsultants requires access to the Project area or any other premises of District. Access rights, if any, shall be granted in writing to Consultant at the sole reasonable discretion of District, consistent with the Scope of Work, specifying conditions, if any, Consultant must satisfy in connection with such access. The foregoing procedure shall constitute the sole mechanism through which Consultant may obtain access to the Project area or any District premises in connection with the Project. Consultant acknowledges that the Project area may be occupied or used by tenants or contractors of District and that access rights granted by District to Consultant shall be consistent with any such occupancy or use.

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. The effective date of this Agreement shall be the date of its execution by Board.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

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2. The Board of Trustees, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the requirement the District not make any expenditure of funds or incur any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through 2026 and through the one year anniversary of execution of this agreement in 2027 and to make further appropriations in each succeeding year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The District is not bound by the terms of this Agreement or obligated to make payment thereunder in any year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, District shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. Consultant shall submit invoices to District monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

> "I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. 01-25/26 and that payment has not been received.

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DocuSigned by:
Fred Brousseau
AC2C24BE831D450...
(Consultant's Signature)

C. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number. No invoice will be processed for payment by District without this number shown thereon. All invoices shall be approved by the Superintendent or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of District business, the same may be approved, audited and paid.

D. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable
Alum Rock Union Elementary School District
2930 Gay Avenue
San Jose, CA 95127

6. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by District, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, District may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to District. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide District at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by District. District's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to District, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article 6 shall constitute a material breach of this Agreement and shall entitle District to withhold any payment due under this Agreement until such breach is cured.

7. INDEPENDENT CONTRACTOR

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Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of District. Consultant shall not represent itself as an agent or employee of the District and shall have no power to bind the District in contract or otherwise.

8. INDEMNIFICATION

Except for the sole negligence or willful misconduct of the District, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the District and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the District, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the District under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the District.

9. INSURANCE

The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amounts indicated below.

Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, **including products and completed operations, property damage, bodily injury, sexual misconduct, and personal & advertising injury** with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District. (Refer to chart below.)

Automobile Liability. ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage. If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District. (Refer to chart below.)

Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code,

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the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. (Refer to chart below.)

Professional Liability (Errors and Omissions). Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District. At least a 2 year tail when written on a claims made form is required. (Refer to chart below)

Type of Coverage Minimum Requirement
Commercial General Liability Insurance, (including Bodily Injury, Personal Injury, Sexual Misconduct, Property Damage, Advertising Injury, and Medical Payments)
Each Occurrence $1,000,000
General Aggregate $2,000,000
Automobile Liability Insurance - Any Auto
Each Accident $1,000,000
General Aggregate No Aggregate
Professional Liability $1,000,000
Workers Compensation Statutory Limits
Employer's Liability $1,000,000

The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance.

Proof of Carriage of Insurance. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered with ACORD forms in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

Contractor shall provide such notice: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice, and renewal certificates and endorsements should be received before the renewal dates."

Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent. (If a contractor is contracting for multiple sites, have the certificate of insurance made out to Alum Rock Union Elementary School District for the fiscal year.)

The Entity, its officers, officials, employees, and volunteers are to be included as additional insured on the CGL policy with respect to liability arising out of work or operations

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performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The additional insured status can be provided in the form of an endorsement to the Contractor's insurance (form CG D4 17 01 12).
A certificate of insurance evidencing that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are included as additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The Additional Insured coverage under the Contractor's general liability policy shall be "primary and non-contributory" and will not seek contribution from the Public Entity's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.

Waiver of Subrogation. Contractor hereby grants to District a waiver of any right to subrogation which any general liability, auto liability, workers' compensation and umbrella insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer. This may be done either by policy endorsement or inclusive policy language.
Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

With the exception of professional liability insurance, if applicable, all policies shall be written on an occurrence form. If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable to the District.

Special Risks or Circumstances. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this

Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the Public Entity.

10. TERMINATION PROVISION

The Board of Trustees, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the District to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

11. PERSONAL SERVICE AGREEMENT

A. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article 1. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the District to such Subconsultant(s) or give the Subconsultant(s) any rights against the District.

12. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any officer or employee of District relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such

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financial interest does exist at the inception of this Agreement, District may immediately terminate this Agreement by giving written notice thereof.

During the term of this Agreement, Consultant shall inform the District in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the District as a Trustee, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the District within thirty (30) days of the employment or hiring of the individual.

13. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of the Board of Trustees.

14. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Santa Clara, State of California, in the judicial district required by court rules.

15. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the District and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by District of any materials supplied by Consultant in the performance of this Agreement.

16. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by District as soon as they are developed, whether in draft or final form. District has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that District at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for District the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is

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owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by District, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the District, its boards, officers, agents or employees, is not given in confidence. Accordingly, District or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the District shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by District. Upon District's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the District. It is expressly understood and agreed that, as between District and Consultant, the referenced license shall arise for District's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. District may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by District.

17. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel. Consultant acknowledges and agrees that any student records and/or personnel and/or payroll records it may receive or review in connection with any work performed hereunder that contain confidential personnel information and/or student records shall remain confidential and shall not be disclosed or provided to any person other than the District's Board and District's designated representative(s). Consultant shall return or destroy such records within 3 business days upon the written request of District.

18. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the District shall be addressed to the Superintendent or his or her designee, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

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19. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the District prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

20. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

21. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or District regulations and policies, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

22. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

23. TITLES AND CAPTIONS

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The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

24. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties.

25. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

26. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

27. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument

28. NON-DISCRIMINATION

Consultant shall discriminate against any person in connection with the provision of the services hereunder on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT, by its Board of Trustees

By signing below, I attest that I have no personal, financial, beneficial, or familial interest in this Agreement.

Dated: _____, 20__

By: Sandra Garcia
Interim Superintendent

_____
Signature

Attest: _____

HARVEY M. ROSE ASSOCIATES, LLC

By: DocuSigned by: Fred Brousseau
AC2C24BE831D450...

Dated: 4/16/2026, 20__

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Exhibit A - Scope of Work

The Consultant and/or any assigned staff must have the qualifications and experience necessary to provide any or all of the following: performance audits, permit compliance reviews, construction audits, IT audits, internal control audits, limited scope financial audits and consulting services on an "as-needed" basis to the Alum Rock Union Elementary School District. Specifically, successful respondents must be able to develop information-gathering strategies and tools, analyze and interpret the results of data-gathering, ensure data gathered can support all conclusions, and produce well-written reports for any service performed for the District. All services performed by the Consultant shall be under the direction of the Assistant Superintendent for Business Services and their team.

The services performed by the Consultant may include performance audits, compliance reviews, IT audits, construction audits, management assessments and reviews, and/or organizational studies. Projects may be independently conducted by the Consultant or performed along with District staff. The Consultant may be asked to provide subject matter experts for on-going audits or other activities conducted by District staff. The timing of the projects and the level of difficulty will dictate the number and qualifications of staff required.

In general, respondent firms should have:

- Expertise and experience in doing performance audits, compliance reviews, IT audits, construction audits, management assessments and reviews, and/or organizational and staffing studies;
- Experience working with public agencies;
- Knowledge of state and federal laws, as appropriate for District-defined activities;
- Knowledge of and experience in preparation of feasibility studies, including analyzing strategic alternatives and implementing desired programs; and
- Ability to demonstrate a high-quality work product, while working in a timely manner to meet established deadlines

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Performance Audit and Consulting Services

Exhibit B – Consultant and SubConsultant Three

Year Fee Schedule

Consultant: Harvey M Rose Associates, LLC

	Yr 1 Hourly Rate	Yr 2 Hourly Rate	Yr 3 Hourly Rate
Partner	$250	$250	$260
Senior Manager (Director)	$225	$225	$234
Principal Analyst	$215	$215	$224
Senior Analyst	$205	$205	$213

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ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT
DISTRICT GUIDELINES

STOP!!!

Please complete questionnaire below before completing Independent Contractor form.

Contractor Name: Harvey M. Rose Associates

PART I		YES	NO
1.	Has this category of worker already been classified an "employee" by the IRS? (i.e. administrators, teachers/instructors, substitutes, school bus drivers, clerical staff, athletic coaches, tutors, cafeteria workers, counselors, examination monitors, proctors, librarians, nurses, psychologists, intern psychologists, individuals "filling in" on an interim basis, specialty teachers)		
2.	Is this individual working as an employee prescribed by the Education Code?		
3.	Is the individual already an employee of the district in another capacity?		
4.	Has the individual performed substantially the same services for the district as an employee in the past?		
5.	Are there currently employees of the district doing substantially the same services as will be required of this individual?		
6.	Does the district have the **legal right** to control the method of performance by this individual?		
7.	Are the services, as being provided, an integral part of school operations?		
If the answer to any of the above questions is **"YES" --- STOP HERE!!!** Do not complete the rest of the questions. The individual is the district's employee and must be paid through payroll as a contracted employee. Call Human Resources for further details.			
If all of the above are **"NO", continue**...			
PART II		YES	NO
8.	Must the required services be performed by this individual?		
9.	Does the district have a continuing relationship with this individual?		
10.	Can this relationship be terminated without the consent of both parties?		
If the answer to the question 8, 9, or 10 is "**YES**", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that, in conjunction with other factors, imply an employment relationship. Go back to PART I and re-evaluate each question. If questions 1-7 are still all "**NO**" continue...			
11.	Does the individual operate an independent trade or business that is available to the general public?		
12.	Does the individual have a substantial investment in his/her business, (i.e. maintains a facility, equipment, etc.)?		
If either 11 or 12 are "**NO**", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll.			
If 11 and 12 are both "**YES**", continue...			
13.	Does the individual provide all materials and support services necessary for the performance of this service?		
14.	Is this paid by the job or on a commission?		
15.	Does the individual bear the cost of any travel and business expenses incurred to perform this service?		
If 11 and 12 are "**YES**", 13 through 15 should also be "**YES**" and are items that should be written into the Independent Contract. This individual is an Independent Contractor. A "**YES**" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent contractor. While there are circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.			

By signing below, Contractor and Program Manager attest that they have reviewed District guidelines and certify that the information above is true and correct.

Contractor Signature: DocuSigned by: Fred Broussard AC2C24BE831D450 Date: 4/16/2026

CONTRACTS MUST BE SUBMITTED 30 DAYS PRIOR TO BOARD MEETING

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ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

Notice of Policy on Business Gifts and Conflicts of Interest

The following is Alum Rock Union Elementary School District's (ARUSD) policy on business gifts and conflicts of interest. Please sign and return a copy of this policy, acknowledging that you have received it and agree to abide by its terms. We also ask that you circulate the policy to any individuals in your organization that have contact with ARUSD employees.

1. Selection criteria. Vendors are selected based on the quality, timeliness, and cost of the service and/or product they provide. All business decision for ARUSD are to be based solely on what is in the best interest of ARUSD.
2. No gifts. ARUSD employees may not solicit or accept gifts, rewards, payment, commissions, gratuities, discounts, or services of any kind or value from anyone having or seeking business with ARUSD except as follows:
   a) unsolicited token gifts such as food, flowers, and promotional items inscribed with the supplier's or customer's logo or business name, with nominal values generally not exceeding $470 in a calendar year.
   b) business-related functions or meals, so long as the function is necessary and the value and frequency of business meals are not excessive.
3. No personal benefit for employees. ARUSD employees may not have any personally beneficial financial dealings with any individual or business organization that furnishes merchandise, supplies, property, or services to ARUSD. This includes arrangements to receive loans (other than bank loans), commissions, royalties, stock ownership, or anything of value. ARUSD employees are also prohibited from purchasing items for personal use from vendors.
4. Personal investments. ARUSD employees directly concerned with the purchase of merchandise and services from supplier firms, including management personnel with approval authority, may not make investments in those companies, other than normal stock and bond market transactions.
5. No benefit for relatives; disclosure required. ARUSD employees may not make or influence any decision that could directly or indirectly benefit a relative and should disclose to ARUSD whenever a relative has a significant interest in a transaction or a significant relationship with an ARUSD vendor.
6. All employees covered. This policy applies to all ARUSD officers, managers, and employees. Violations of this policy may result in disciplinary action, up to and including termination.
7. Penalties for vendors. Any vendor who violates this policy shall be subject to the immediate and permanent loss of ARUSD business.

As a valued vendor of ARUSD, please acknowledge your receipt of this policy and your agreement to abide by it.

Received and agreed to on behalf of vendor by:

Signature: DocuSigned by: Fred Brousseau 4C2C7485B71D450... Printed Name: Fred Brousseau

Title: Principal Date: 4/16/2026

Vendor Name: Harvey M. Rose Associates

Vendor Address: 1390 Market street, Suite 1150

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ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
NETWORK SECURITY & PRIVACY "CYBER" LIABILITY INSURANCE REQUIREMENTS

NETWORK SECURITY & PRIVACY "CYBER" LIABILITY: Subject to the limit of $2,000,000 per claim to be maintained for the duration of the agreement/contract and three years following its termination, to respond to privacy and network security liability claims including but not limited to:

NETWORK SECURITY & PRIVACY "CYBER" LIABILITY - arising from theft, dissemination, and/or use of District confidential information including, but not limited to, bank, credit card account, and personally identifiable information such as name, address, social security numbers, student records, etc., regardless of how the information is stored or transmitted.

NETWORK SECURITY & PRIVACY "CYBER" LIABILITY - security liability arising from (i) the unauthorized access to, use of or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or District data, including denial of service, unless caused by a mechanical or electrical failure.

NETWORK SECURITY & PRIVACY "CYBER" LIABILITY - arising from the introduction of a computer virus into, or otherwise causing damage to, an employee's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon.

NETWORK SECURITY & PRIVACY "CYBER" LIABILITY - Crisis-management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.

Date: 4/16/2026

Name of Contractor or Company: Harvey M. Rose Associates

Representative's Name and Title: Fred Brousseau, Principal

Signature: DocuSigned by: Fred Brousseau AC2C249E331D450...

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 · Phone: 408-928-6800 · Fax: 408-928-6416 · www.arusd.org

CONTRACTOR CERTIFICATION: PROHIBITION ON POLITICAL CONTRIBUTIONS

CONTRACTOR NAME: Harvey M. Rose Associates, LLC ("Contractor")

On December 18, 2025, the Board of Trustees of the Alum Rock Union Elementary School District ("ARUSD") adopted Board Resolution #33-25/26 prohibiting political contributions by firms contracting with the Alum Rock Union Elementary School District, and defining appropriate certification, disclosure, and enforcement mechanisms. A copy of Resolution #33-25/26 is attached hereto. Per the Resolution, The Board of Trustees has directed that, as a condition of contract award, Contractor shall submit this signed Certification under penalty of perjury affirming compliance with the provisions of Resolution #33-25/26.

By signing below, Contractor certifies the following:

1. Contractor has read and understands Resolution #33-25/26 and agrees to abide by its terms as a condition of award of any contract with the Alum Rock Union Elementary School District for the period of time specified in Resolution #33-25/26, and has read and understands and agrees to the District's remedies therein upon a material breach of Resolution #33-25/26.

2. Contractor (and any officer, director, principal, owner, subsidiary, affiliate, subcontractor, or other entity under its control) has not made any political contribution or pledge of contribution, whether monetary or in-kind, to any current or prospective candidate for the ARUSD School Board, any ARUSD political committee, or any committee controlled by such candidate or officeholder during the 18 month period immediately preceding the contract award, nor during any negotiations for the Contract.

3. During the term of this Contract, and for a period of 18 months following its expiration or termination, Contractor (and any officer, director, principal, owner, subsidiary, affiliate, subcontractor, or controlled entity) shall not directly or indirectly make any contribution or pledge of contribution to:

   - any candidate for the ARUSD School Board;
   - any current ARUSD School Board Member running for any local, state, or federal office;
   - any ARUSD-related political campaign; or
   - any political action committee or independent-expenditure committee whose expenditures support or oppose ARUSD Board Members or candidates for the ARUSD School Board or any other office held or sought by an ARUSD Board Member.

Sandra Garcia, Interim Superintendent

Board of Trustees: Linda Chavez, President, Andrés Quintero, Vice-President
Minh Pham, Clerk ·Corina Herrera-Loera, Member· Minh Nguyen, Member

For purposes of this Section, "contribution" includes direct monetary contributions; in-kind contributions; and contributions made to or through independent-expenditure committees (IEs), political action committees (PACs), or similar entities.

4. Contractor shall disclose in writing to ARUSD any political contributions made during the Contract term (or restricted post-contract period), including the identity of the recipient, the amount, the date, and whether the contribution was direct or associated with independent expenditures.

5. Contractor will provide a copy of this signed Certification and the attached Resolution #33-25/26 to each of its officers, directors, principals, owners, subsidiaries, affiliates, subcontractors, or other entity under its control.

The undersigned hereby certifies under penalty of perjury under the laws of the State of California that they are authorized to execute this certification on behalf of Contractor and that the foregoing certifications are true and correct.

Dated: 3/25/26

"Contractor"

Fred Brousseau

Print name: Fred Brousseau

Title: Principal

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ALUM ROCK UNION SCHOOL DISTRICT

RESOLUTION NO. 33-25/26

RESOLUTION ADOPTING A POLICY PROHIBITING POLITICAL CONTRIBUTIONS BY CONTRACTED FIRMS

Adopted: December 18, 2025

WHEREAS, the Alum Rock Union School District ("ARUSD" or "District") is committed to upholding the highest standards of transparency, fairness, and public trust in all aspects of its operations, including the procurement and administration of contracts for district services, facilities, and programs; and

WHEREAS, the District has a compelling interest in ensuring that taxpayer dollars are used solely for their intended public purpose and are not—directly or indirectly—used as a vehicle for political influence, favoritism, or advancement; and

WHEREAS, political contributions made by firms seeking or holding District contracts, or by their subsidiaries, principals, subcontractors, or controlled entities, may create real or perceived conflicts of interest that undermine confidence in the integrity of District decision-making; and

WHEREAS, the appearance of impropriety is particularly concerning in connection with large-scale or long-term projects, where public funds and public trust must be safeguarded with particular care; and

WHEREAS, similar prohibitions appear in the Levine Act (Government Code section 84308), which restricts certain political contributions between parties seeking contracts, licenses, or permits and local agency officials involved in making those decisions, reflecting well-established state policy to prevent undue influence in governmental contracting; and

WHEREAS, the Board of Trustees seeks to adopt clear standards that eliminate the risk that public funds associated with District contracts could be used, intentionally or unintentionally, to influence ARUSD Board elections or related political activities; and

WHEREAS, the Board finds that prohibiting political contributions by firms contracting with ARUSD—and defining appropriate certification, disclosure, and enforcement mechanisms—will strengthen public trust and uphold the District's commitment to ethical stewardship of public resources;

NOW, THEREFORE, BE IT RESOLVED That the Board of Trustees of the Alum Rock Union School District hereby adopts the following Prohibition on Political Contributions by Contracted Firms, to be incorporated into all District contracts issued on or after the date of this Resolution:

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Contractor Political Contribution Prohibition

1. **Pre-Award Certification**
   The Contractor (and any officer, director, principal, owner, subsidiary, affiliate, subcontractor, or other entity under its control) hereby certifies that it has made no political contribution or pledge of contribution—whether monetary or in-kind—to any current or prospective candidate for the ARUSD School Board, any ARUSD political committee, or any committee controlled by such candidate or officeholder during the 18 month period immediately preceding the contract award, nor during any negotiations for this Contract.

2. **Prohibition During and After the Contract Term**
   During the term of this Contract, and for a period of 18 months following its expiration or termination, the Contractor (and any officer, director, principal, owner, subsidiary, affiliate, subcontractor, or controlled entity) shall not directly or indirectly make any contribution or pledge of contribution to:

   - any candidate for the ARUSD School Board;
   - any current ARUSD School Board Member running for any local, state, or federal office;
   - any ARUSD-related political campaign; or
   - any political action committee or independent-expenditure committee whose expenditures support or oppose ARUSD Board Members or candidates for the ARUSD School Board or any other office held or sought by an ARUSD Board Member.

   For purposes of this Section, "contribution" includes direct monetary contributions; in-kind contributions; and contributions made to or through independent-expenditure committees (IEs), political action committees (PACs), or similar entities.

3. **Certification and Disclosure Requirements**
   As a condition of contract award, the Contractor shall submit a written certification under penalty of perjury affirming compliance with this provision.

   A copy of this Resolution shall be provided to the Contractor and to any officer, director, principal, owner, subsidiary, affiliate, subcontractor, or other entity under its control. Each such party shall sign an acknowledgment confirming receipt of the Resolution. The District shall retain proof of all signed acknowledgments in its official contract files.

   The Contractor shall also disclose any political contributions made during the contract term (or restricted post-contract period), including the identity of the recipient, the amount, the date, and whether the contribution was direct or associated with independent expenditures.

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4. **Material Breach and Remedies**
   Any violation of this provision shall constitute a material breach of the Contract and may result in remedies including, but not limited to:

   - termination of the Contract;
   - forfeiture or repayment of District funds;
   - ineligibility for future District contracts; and
   - any additional remedies available under law or District policy.

BE IT FURTHER RESOLVED that the Superintendent, or designee, is directed to incorporate this language into all applicable District contracts and procurement documents; to develop administrative procedures to ensure compliance; and to provide guidance to District staff, consultants, and prospective contractors regarding these requirements.

BE IT FINALLY RESOLVED that this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Board of Trustees of the Alum Rock Union School District on this 18th day of December, 2025, by the following vote:

AYES: 4
NOES: 0
ABSENT: 0
ABSTAIN: 0

Signed by:
Minh Pham
6E9EAC63459C459...

Clerk of the Governing Board

Date: December 18, 2025