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Malverne Union Free School District, New York

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LETTER OF ENGAGEMENT FOR 2023-2024 BOND COUNSEL SERVICES

This is a Letter of Engagement to retain the professional services of Hawkins, Delafield & Wood LLP as bond counsel to the Malverne Union Free School District (the "School District"), in the County of Nassau, New York, for the **2023-2024** school year in relation to the issuance of the School District's serial bonds, bond anticipation notes, and tax anticipation notes. Accordingly, I have assembled information about our services and the fees associated therewith, and it is set forth below. Should any other School District financing requirements arise, we will supplement this letter.

SERVICES: Our primary responsibility as Bond Counsel is to render an opinion in connection with each issue of obligations by the School District, which expresses our belief (i) that the obligations have been properly authorized and issued and are valid, (ii) that the essential sources of security for the obligations have been legally provided for and (iii) that interest on the obligations is exempt from federal income taxation. A significant emphasis in discharging these responsibilities is the preparation of a record sufficient to enable us to render our opinion. However, in the process of reaching the point at which we have prepared such a record, we are called upon to perform a number of related functions, which may include the following:

(1) Participation in telephone discussions and conferences with representatives of the School District, and the State, regarding the School District's financing program and requirements, and obtaining copies of any required approvals from the State;

- (2) Preparation and delivery of a bond issue time-table/calendar letter for use by the Administration and Board of Education, if requested;
- (3) Preparation of all finance authorization documents, including the resolution calling the bond referendum, the legal notice of referendum, and related documents;
- (4) Review of affidavits of newspaper publishers with respect to the publication of the official notices of election;
- (5) Review of election documents and procedures including:
 - (a) Review of Resolution appointing officers to act at the Annual or Special District Meeting,
 - (b) Review of oaths of Inspectors of Election, and
 - (c) Review of Certificate of Inspectors of Election, and certificate of canvass of the vote;
- (6) Preparation of bond resolution to be adopted by the Board of Education after a successful referendum;
- (7) Review of affidavits of newspaper publishers with respect to the publication of the summary form of bond resolution;
- (8) Participation in conferences and telephone conversations with representatives of the School District, the School District's financial advisor and State Department of Education Office of State Aid with respect to state aid questions;
- (9) Providing advice and consultation with respect to compliance with applicable provisions of the Internal Revenue Code of 1986, as amended, including all federal arbitrage regulations;
- (10) Participation with the School District and its financial advisors in scheduling and structuring each bond and note financing;
- (11) Assistance in drafting and review of agreements, forms and underlying documentation relating to the financing;
- (12) Review of maturity schedules and official statements prepared by the School District's financial advisor, including:
 - (a) Review of each proposed maturity schedule for each bond issue to verify compliance with legal requirements,
 - (b) Review of the final maturity for each bond issue to verify compliance with legal requirements (i.e. amount of annual installments and adherence to the

appropriate period of probable usefulness pursuant to the Local Finance Law),

- (c) Review and modification of, where appropriate, the description of constitutional and statutory requirements and procedures as described in each official statement,
- (d) Review of the overall content of each official statement, and
- (e) Participation in telephone conversations with representatives of the School District with respect to any pending litigation that may need to be disclosed in the official statement;

(13) Preparation and drafting of the Certificate of Determination to be executed by the President of the Board of Education as the chief fiscal officer of the School District, which document authorizes the sale of each issue of bonds or notes, describes and sets forth the terms, forms and details thereof, and makes provision for the School District's continuing disclosure obligations under applicable federal securities laws and/or regulations;

(14) Preparation and drafting of the legal Notice of Sale to be circulated to the investment community in connection with sale of bonds;

(15) Preparation and drafting of a "Summary" legal Notice of Sale, to be published in the School District's official newspaper and *"The Bond Buyer,"*

(16) Preparation of the form of the bond for each bond sale, and note for each note sale;

(17) Preparation of the draft opinion for each bond and note sale, and the furnishing of same to the credit rating agencies and bond insurance companies, as requested;

(18) Preparation of all continuing disclosure agreements, as required under applicable federal securities laws and/or regulations;

(19) Review of the draft preliminary official statement;

(20) Assistance, upon request, in the negotiation of contracts and other matters related to the bond and note offering and rendering of additional opinions as to specific matters;

(21) Consultation with the School District, its accountants and attorneys, credit rating agencies, municipal bond insurers and others in regard to the financing;

(22) Review of the debt statement prepared by the School District with the assistance of the financial advisor and filed with the State Comptroller prior to the sale of each bond issue;

(23) Administrative coordination of meetings and sale arrangements, including attendance at and supervision of all bond and note sales conducted in our offices;

- (24) Preparation, drafting and review of closing papers including:
 - (a) Certificate of Award of the President of the Board of Education,
 - (b) Closing Certificates,
 - (c) School Attorney's Certificate,
 - (d) Certificate of Delivery and Payment,
 - (e) Tax Certificate, and
 - (f) Certificate with Respect to the Official Statement;
- (25) Attending to all necessary Internal Revenue Service issue-reporting requirements, as required pursuant to the Internal Revenue Code of 1986, as amended;
- (26) Review of municipal bond insurance policy and related documents provided by bond insurer, in the event a bond or note issue is insured;
- (27) Delivery of securities to The Depository Trust Company in New Jersey to be held in escrow until the closing;
- (28) Preparation of formal and reliance opinions, as well as requested transcripts of proceedings, for delivery to the bond insurer for every bond and note issue which is insured;
- (29) Administrative coordination of bond and note closings with School District, financial advisor, underwriter and the Depository Trust Company;
- (30) Rendering of our final approving legal opinion with respect to each financing;
- (31) Continuous and unlimited communication with the School District throughout the course of each financial transaction; and
- (32) Availability at all times of our skilled and caring team of professionals to assist with any questions or concerns relating directly or indirectly to the transaction.

The scope of our services as Bond Counsel to the School District would also include the examination of applicable law and review of financial and debt statements.

In addition, we will assemble a complete record of proceedings to which we would refer when rendering our written opinion that the obligations proposed to be issued by the School District are valid and legally binding, and we will provide advice, including consultations with representatives of the School District and any others who may be involved in the various aspects of the financing. We will prepare all relevant proceedings for action by the Board of Education to authorize the issuance of School District obligations, and we will prepare documentation for the sale and delivery of the School District's bonds and notes, as required.

FEES. For our customary and usual services as described above, we would propose the following schedule of fees.

Authorization: With respect to an authorization to undertake and finance a new capital project to be submitted for voter approval at an Annual District Meeting or at a Special District Meeting, we propose to charge a one -time "*bond authorization fee*" of \$7,500 for the preparation of all pertinent documentation, including a resolution submitting a bond proposition at an Annual District Meeting setting forth the bond proposition, or a resolution calling a Special District Meeting and the Notice of Special District Meeting; preparation of the requisite bond resolution following a successful vote, together with the Notice of Adoption, and affidavits and certifications pertaining thereto. Said fee also includes all advice and consultation concerning the foregoing and related matters.

Serial Bonds: In connection with the sale of serial bonds, including the preparation of documentation, including the public sale authorization and the legal notice of sale, and for review of the official statement prepared in connection with the public offering of School District securities, we will charge a "*bond sale fee*" of \$5,750, plus a "*per bond fee*" based on the amount of bonds sold at any one time, calculated at the rate of \$1.25 per \$1,000 principal amount of bonds. Said fee will include advice and consultation and all other usual and customary services expected to be rendered in connection with the sale of serial bonds of the School District.

Bond Anticipation Notes: In the event bond anticipation notes are issued, a fee of \$750 will apply to bond anticipation notes in amounts of \$1,000,000 or less, sold through an informal negotiation process and not requiring an official statement. In the alternative, for any bond anticipation notes which are sold pursuant to customary formal public sale procedures, which may require the preparation and circularization of an Official Statement and a Notice of Sale, and corresponding additional documentation and service provided by Bond Counsel, we will charge a fee of \$3,750 plus an amount based upon the dollar amount of bond anticipation notes sold at one time, calculated at the rate of 75¢ per \$1,000 principal amount of notes. Said fee will include advice and consultation and all other usual and customary services expected to be rendered in connection with the sale of bond anticipation notes of the School District.

Related Disbursements: The foregoing fees do not include our out-of-pocket disbursements, such as duplicating, postage, FedEx and other delivery service charges, preparation and filing of IRS 8038 Reporting Forms (\$150 for notes and \$350 for bonds), postage, and preparation of book-entry securities, the aggregate amount of which is usually nominal, but not subject to precise statement in advance.

We charge \$325.00 for the initial instrument for each bond issue (\$225 for the initial instrument for each note issue), and \$25.00 for each additional bond and note instrument. Such charge includes our costs of security preparation, as well as our services in delivering such securities to The Depository Trust Company in New Jersey in escrow pending a closing. We charge \$100 per instrument for note instruments prepared in other than book-entry format. All services provided by outside vendors (express delivery and messenger service) are billed at actual cost to the firm.

Tax Anticipation Notes: Supplementing the general outline of services set forth above, we provide the following specific services in connection with the authorization and sale of tax anticipation notes:

(1) participation in telephone conferences and discussions with representatives of the School District regarding the School District's cash-flow financing requirements, including "sizing" the issue within the limitations of applicable federal and state law; and

(2) drafting of basic authorizing documents for the Board of Education relating to the financing, including the resolution authorizing the issuance of tax anticipation notes and proceedings with respect to the sale of the tax anticipation notes; as well as all telephone discussions with the School District and its representatives, including its financial advisor, preparation or review of the tax anticipation note resolution and all related closing documents, review of the District's cash-flow schedules and assistance in the preparation of and review of its Official Statement, advice and consultation concerning the foregoing and related matters, preparation and filing of the necessary Internal Revenue Service reporting form, and our final approving legal opinion for delivery to the purchasers of the tax anticipation notes.

Our fees, which include preparation of a tax anticipation note resolution, examination of cash-flow statements, review of official statement and notice of sale drafts, and advice concerning relevant thresholds under the Internal Revenue Code of 1986, as amended, and all other related matters, are computed as follows:

<u>ISSUE AMOUNT IN DOLLARS</u>	<u>FEE</u>
Issues of \$ 4 million	\$ 5,000
Issues of \$ 5 million	\$ 5,750
Issues of \$ 6 million	\$ 6,000
Issues of \$ 7 million	\$ 6,400
Issues of \$ 8 million	\$ 6,800
Issues of \$ 9 million	\$ 7,150
Issues of \$10 million	\$ 7,500

Plus \$350 for each additional \$1 million notes up to an issue of \$20 million.

The fees for tax anticipation note issues are pro-rated to the exact amount of the issue. For example, the fee for a \$5.5 million issue would be \$5,875, calculated by adding \$5,750 (the fee for a \$5 million issue) and \$125.00 (being ½ of the \$250 incremental amount of the fee that would apply to an issue of \$6 million).

Our fees for tax anticipation notes include all of our out of pocket expenses except for the costs relating to the preparation of book-entry securities. We charge \$225.00 for the initial book-entry instrument for each tax anticipation note issue, and \$25.00 for each additional instrument. Such charge includes our costs of security preparation, as well as our services in delivering such securities to The Depository Trust Company in New Jersey in escrow pending a closing. We charge \$100 per instrument for note instruments prepared in other than book-entry format.

* * *

The fees provided herein for serial bonds and bond anticipation notes shall apply to any such bonds and notes authorized in the **2023-2024** school year and thereafter, unless and until such fees are modified by mutual consent. The fees provided herein for tax anticipation notes shall apply to any such notes issued in or on account of the **2023-2024** school year and thereafter, unless and until such fees are modified by mutual consent.

The fees described above do not, of course, include the drafting of legislation or the handling of litigation, none of which is necessary or to be anticipated in an ordinary financing; or assistance in responding to SEC initiatives or inquiries, IRS audits, or any related matters. It is our practice to submit a bill for our services rendered in connection with any issue within ten days following a closing.

This agreement is terminable at will on thirty (30) days' notice and the School District's responsibility at termination would be to pay only those fees and expenses incurred up to the date of termination.

In recent years, several courts have held that when a firm reviews its compliance with professional conduct rules or other law in the representation of a client, the firm may not be able to claim attorney-client privilege for its review unless the firm withdraws from representing the particular client before conducting the review or the client agrees that the firm can assert privilege for any such review. We believe it is in the interest of our clients that the firm have the protection of the privilege in connection with internal reviews of its work for you. The School District agrees that any communications between the lawyers and staff working on the School District matters and the lawyers at the firm who may be reviewing that work for compliance with professional conduct rules or other law will be protected by the firm's own attorney-client privilege and that any such review will not constitute a conflict between our interests and your interests.

After completion of this engagement, changes may occur in applicable laws or regulations, or in administrative or judicial interpretations thereof, that could have an impact upon issues as to which we have advised the School District during the course of this engagement. Unless you subsequently engage us, after completion of this engagement, to provide additional advice on such issues, the firm has no continuing obligation to advise you with respect to any such future legal developments.

In addition to, and not in limitation of, any other rights, the School District may have a right to arbitrate fee disputes under applicable law, including Part 137 of Title 22 of the Codes, Rules and Regulations of the State of New York. Pursuant to Part 137 of the Rules of the Chief Administrator of the New York State Office of Court Administration, New York State has established a fee dispute resolution program which allows a client to seek the informal and expeditious resolution of a fee dispute under certain circumstances. In the event a dispute arises concerning our fees, the School District may therefore have a right to arbitrate under Part 137. A copy of the applicable rules can be found at the following link: <https://ww2.nycourts.gov/rules/chiefadmin/137.shtml>.

The firm from time to time has represented, currently represents, and may in the future represent, various underwriters or purchasers of municipal bonds in financings involving other issuers. The School District consents to the firm simultaneously representing such underwriters or purchasers and the School District. The School District acknowledges and agrees that it has not relied upon any firm representations or statements of any kind in deciding to give its consent. Instead, to the extent it has deemed it necessary, the School District has consulted with other independent counsel and it has exclusively relied upon such other counsel in deciding to consent.

This agreement is intended as a complete integration of the terms of this engagement and, as such, all prior understandings, representations, warranties and agreements are fully and completely merged herein.

Should the terms hereof be acceptable, may I kindly ask that the President of the Board of Education acknowledge the acceptance of the terms of our engagement by signing where provided below, and returning a signed copy of this letter to us.

With all best wishes, I am

Very truly yours,



Daniel G. Birmingham

DGB:s

**APPROVED AND ACCEPTED BY
MALVERNE UNION FREE SCHOOL DISTRICT, NEW YORK**

By: President of the Board of Education

(printed name)

(signature)

Date: _____