

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC Approval of Bond Counsel Legal Services Engagement Letter for the Law Firm of Escamilla & Poneck, Inc.

SUBMITTED BY: Juan J. Cruz **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: September 17, 2008

RECOMMENDATION:

RATIONALE:

BUDGETARY INFORMATION

BOARD POLICY REFERENCE AND COMPLIANCE

ESCAMILLA & PONECK, INC.

Attorneys and Counselors
100 Travis Park Plaza Building
711 Navarro
San Antonio, Texas 78205
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(210) 225-0001 ♦ Fax (210) 225-0041

September 17, 2008

Mr. John M. Bruce
President, Board of Trustees
United Independent School District
201 Lindenwood Drive
Laredo, Texas 78045

Re: Bond Counsel Services

Dear Mr. Bruce:

The purpose of this engagement letter (the "Agreement") is to set forth certain matters concerning the services we will perform as bond counsel to the United Independent School District (the "District") in connection with the issuance of public securities or obligations (the "Obligations") for facility acquisitions, financial transactions, and capital improvements for the District.

SCOPE OF ENGAGEMENT

In this engagement, Escamilla & Poneck, Inc. (the "Firm") expects to perform the following duties:

- (1) Prepare documents calling any bond election, notice thereof, and canvassing the results, if an election is required, and submitted election documents to the U.S. Justice Department, Voting Rights Section, for preclearance purposes.
- (2) Prepare all instruments pursuant to which the debt will be authorized, secured, sold and delivered in consultation with the District's staff, the Board of Trustees, the District's Financial Advisor, and other officials and consultants of the District.
- (3) Attend meetings of the Board of Trustees and meetings with the District's staff to the extent required or requested.
- (4) Attend meetings with prospective bond purchasers and meetings with rating agencies or credit enhancers to the extent requested or required.

- (5) Cooperate with the District and its consultants in the preparation of official statements or other securities laws disclosure documents, including review of the information therein describing the debt, the security therefor, and the federal income tax status thereof.
- (6) Submit the debt instruments to the Attorney General of the State of Texas for approval and obtaining the registration of the debt instruments by the Comptroller of Public Accounts of the State of Texas, as required by law.
- (7) Supervise the printing, execution, and delivery of the debt instrument to the purchasers.
- (8) When so delivered, render an opinion covering the validity of the debt instruments under Texas law and the tax-exempt status of the interest thereon under federal income tax laws.
- (9) Provide post-insurance compliance and follow-up advice, as may be requested by the District, concerning such subjects as arbitrage and rebate matters, the application of bond proceeds, new developments in the law concerning debt issues, and changes in industry practices.

**ADDITIONAL SERVICES RELATING TO LEASE PURCHASE FOR THE
ACQUISITION OR IMPROVEMENTS TO REAL PROPERTY PURSUANT TO TEXAS
LOCAL GOVERNMENT CODE, CHAPTER 271, SUBCHAPTER A AND TEXAS
GOVERNMENT CODE, CHAPTER 303, AS AMENDED**

The services described above to be provided as bond counsel do not include all services involved in the issuance of debt by the District's Public Facilities Corporation for and on behalf of the District or the rendering of an opinion on the legality and validity of debt issued by the Public Facilities Corporation.

Therefore, along with the traditional services, as described above, rendered as bond counsel, which include services rendered in connection with the delivery of our approving legal opinion to the effect that we have acted as bond counsel for the District for the sole purpose of rendering an opinion with respect to the legality and validity of its bonds under the Constitution and laws of the State of Texas, and with respect to the exemption of the interest on such bonds from federal income taxes, our additional services as bond counsel in connection with the issuance and delivery of a Lease Purchase Contract and Lease Purchase Contract Revenue Bonds, will also include delivery of an opinion with respect to the legality and validity of the Lease Purchase Contract entered into between the District and the Public Facilities Corporation, and the legality and validity of the Lease Revenue Bonds issued by the Public Facilities Corporation for and on behalf of the District, the legality and validity of the pledge of the Lease Purchase Contract Revenues as security for the repayment of the Lease, the legality and validity of the pledge of the real property and improvements of the Corporation as additional security for the repayment of the Bonds, the exemption of the interest on the Bonds from federal income taxes, and legality and validity of the use and pledge of "available revenues" of the District as security for the repayment of the Lease.

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Additionally, we will prepare the documents relating to the authorization, issuance, sale and delivery of debt by the Public Facilities Corporation. Finally, the services will also include negotiation and preparation of an Indenture of Trust Agreement between the Corporation and the Underwriters of the Corporation's debt as well as the Trustee of the Trustee Estate securing the repayment of the Corporation's Revenue Bonds and Lease-Purchase Contract between the Corporation and the District.

ADDITIONAL SERVICES RELATING TO CONTINUING DISCLOSURE AMENDMENTS TO SEC RULE 15c2-12

The services described above to be provided as bond counsel do not include any responsibility for investigating the financial condition and affairs of the Board of the District or any organization for which the District may issue Bonds. Our approving legal opinion, as bond counsel, will contain a paragraph substantially to the effect that we have acted as bond counsel for the District for the sole purpose of rendering an opinion with respect to the legality and validity of the Bonds under the Constitution and laws of the States of Texas, and with respect to the exemption of the interest on the Bonds from federal income taxes, and for no other reason or purpose. That paragraph of our opinion will also disclose that we have not been requested to investigate or verify any record, data, or other material relating to the financial condition or capabilities of the Board of the organization for which the Bonds are issued, and have not assumed any responsibility with respect thereto.

The Firm will undertake, upon request of the District, as additional services beyond the bond counsel services identified above, such services as may be necessary to assist the District in satisfying the continuing disclosure requirement of Rule 15c2-12 promulgated by the U.S. Securities and Exchange Commission, and effective as to Bonds sold on and after July 3, 1995. Our fees for such services would be based upon the customary hourly billing rates for the attorneys providing such services. Should it be necessary for the Firm to render a written opinion with respect to any matters relating to the compliance by the District with the ongoing disclosure or other compliance requirements of Rule 15c2-12, such fee for legal services provided in connection with the delivery or the opinion shall be set at the amount agreed upon at that time by us and the District.

ADDITIONAL SERVICES AS REQUESTED

Upon request of the District, the Firm will undertake additional services as may be requested relating to issuance of debt or other obligations or relating to post-issuance compliance with laws or covenants of the District application to debt or other obligations.

ATTORNEY-CLIENT RELATIONSHIP

Upon execution of this Agreement, the District will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that, in this transaction, we represent only the District; we are not counsel to any other party, and we are not acting as an intermediary among the

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parties. Our services as bond counsel are limited to those contracted for in this Agreement; the District's execution of this Agreement will constitute an acknowledgement of those limitations. Our representation of the District will not affect, however, our responsibility to render an objective legal Opinion.

Our representation of the District and the attorney-client relationship created by this Agreement will be concluded upon the termination of this contract. Nevertheless, subsequent to Closing, we will mail the appropriate Internal Revenue Service Form 8038, prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Obligations, if applicable.

As you are aware, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the District, one or more of our present or future clients will have transactions with the District. It is also possible that we may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the Obligations. We do not believe such representation, if it occurs, will be sufficiently different from the issuance of the Obligations so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Obligations. Execution of this Agreement will signify the District's consent to our representation of others consistent with the circumstances described in this paragraph.

TERMS OF AGREEMENT

This Agreement shall be for a period of five (5) years, or until all bonds approved by the voters during the term of this Agreement have been sold, whichever is later, to commence on September 17, 2008, and ending on September 17, 2013, or upon the closing and delivery of the last installment of bonds approved by the voters in such bond election, whichever is later. Furthermore, at the sole option of the District (and consent of the Firm), this Agreement and provisions hereof, may be extended for a one (1) year period and may be continued to be extended from year-to-year until terminated, as provided herein.

FEES

Based upon: (i) the agreement of the terms, structure, size and schedule of the financing represented by the issuance of obligations ("Obligations"); (ii) the duties bond counsel will undertake pursuant to this Agreement; (iii) the time the Firm anticipates devoting to the financing; and (iv) the responsibilities bond counsel will assume in connection therewith, fees will be as follows for the issuance of Obligations:

1. Fees for services for general obligation and revenue debt (excluding Public Facilities Corporation Debt)

- a. The fees to be charged as bond counsel for the District for the issuance of tax-supported debt (general obligation bonds, contractual obligations, and tax notes) would be a scaled fee as follows:

\$1.00 per \$1,000 Bond for principal amount of the Obligations (with a minimum of \$10,000 per transaction) up to \$75,000,000, and \$0.75 per \$1,000 Bond for the principal amount of the Obligations over \$75,000,000, exclusive of actual out-of-pocket expenses, as discussed below.

- b. The fees to be charged as bond counsel for revenue-supported debt (including debt issued by the Public Facilities Corporation or other conduit issuers) would be scaled as follows:

\$7,500 for the first \$1,000,000 in principal amount and \$1.10 per \$1,000 Bond over \$1,000,000, exclusive of out-of-pocket expenses as described below.

- c. The fees to be charged as bond counsel for refunding debt would be 25% higher than the fees to be charged as provided in subparagraphs 1.a and b, above.

2. Fees for services for debt issued by the Public Facilities Corporation

- a. The fees to be charged as bond counsel for the District for the issuance of debt by the Public Facilities Corporation (excluding refunding debt) would be a scaled fee as follow:

\$40,000 for the first \$10,000,000 principal amount, plus \$1.00 per \$1,000 Bond for principal amounts over \$10,000,000, exclusive of actual out-of-pocket expenses, as described below.

- b. The fees to be charged as bond counsel for refunding debt issued by the Public Facilities Corporation would be 25% higher than the fees charged as provided in subparagraph 2.a., above.

3. Fees for services relating to Amendments to SEC Rule 15c2-12

The fees to be charged for additional services, as requested by the District and relating to amendments to SEC Rule 15c2-12, would be based upon the customary hourly billing rates of the Firm attorney providing such services. Should it be necessary for the Firm to render a written opinion with respect to any matters relating to the compliance by the District with the ongoing disclosure or other compliance requirements of Rule 15c2-12, such fee for legal services provided in connection with the delivery or the opinion shall be set at the amount agreed-upon at that time by us and the District.

4. Fees for services as requested by the District

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The fees to be charged for other services, as requested by the District excluding services covered by the fees described above, shall be negotiated at the time the services are requested.

In addition to the bond counsel fee, the District will reimburse bond counsel for payment to the Texas Attorney General for filing fees and for all out-of-pocket expenses noted below related to the issue.

Each request for legal services shall be made in writing and agreed-upon by all parties before initiation of the requested legal services. In addition, bond counsel will expect to be reimbursed for all client charges made or incurred on the District's behalf, such as travel costs, photocopying, deliveries, long distance telephone charges, telecopier charges, filing fees, computer-assisted research and other expenses, including attorney general fee.

Bond counsel fee is usually paid at the closing of the Obligations (the "Closing"), and the Firm customarily does not submit any statement until the Closing unless there is a substantial delay in completing the financing. If this transaction is delayed beyond one (1) year, the Firm reserves the right to present for payment an interim statement. The Firm may submit an additional statement for client charges (expenses) following the Closing. If the financing is not consummated, it is understood that bond counsel will not be paid for time expended on the District's behalf but will be paid for client charges made or incurred therein.

TERMINATION

This Agreement may be terminated, with or without cause, by the District or Escamilla & Poneck, Inc. upon the giving of at least sixty (60) days' prior written notice to the other party of its intention to terminate, specify in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the amounts due Escamilla & Poneck, Inc. for services provided and expenses incurred to the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement.

RECORDS

At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

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MISCELLANEOUS

This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

This Agreement shall be binding upon and inure to the benefit of the District and Escamilla & Poneck, Inc., their respective successors and assigns; provided, however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

This instrument contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be no force or effect except for a subsequent modification in writing signed by all parties hereto.

If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this Agreement dated and signed by an authorized officer, retaining the original for your files. We look forward to working with you.

ESCAMILLA & PONECK, INC.

By: _____
JUAN F. AGUILERA

UNITED INDEPENDENT SCHOOL DISTRICT

By: _____
JOHN M. BRUCE
Title: President, Board of Trustees

Date: _____

Enclosure