



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: Consideration and Action to Hire the Underwood Law Firm as Special Legal Counsel to Provide Professional Services to the District Concerning Applications and Agreements for Limitation on Appraised Value of Property under the Texas Economic Development Act, Texas Tax Code, Chapter 313

SUBMITTED BY: Juan Cruz **OF:** UISD Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: October 16, 2019

RECOMMENDATION:

It is recommended that the Board of Trustees consider and take action to hire the Underwood Law Firm as Special Legal Counsel to Provide Professional Services to the District Concerning Applications and Agreements for Limitation on Appraised Value of Property under the Texas Economic Development Act, Texas Tax Code, Chapter 313

RATIONALE:

BUDGETARY INFORMATION:

POLICY REFERENCE & COMPLIANCE:

UNDERWOOD

FRED STORMER
Phone: 806.379.0306
Fax: 806.379.0316
www.uwlaw.com
Fred.Stormer@uwlaw.com

ADDRESS:
500 S. Taylor Street
Suite 1200, LB 233
Amarillo, TX 79101-2446
MAILING ADDRESS:
P.O. Box 9158
Amarillo, TX 79105-9158

October 4, 2019

Mr. Robert J. Santos, Superintendent
and Board of Trustees
United Independent School District
c/o Fortunato Paredes
J. Cruz & Associates, LLC
216 W. Village Blvd., Suite 202
Laredo, TX 78041

via email

Re: Agreement for Limitation on Appraised Value
under Chapter 313 of the Texas Tax Code

Dear Mr. Santos and Members of the Board:

The Underwood Law Firm ("Underwood") was contacted by United Independent School District's (the "District") legal counsel, Fortunato Paredes with Cruz & Associates, LLC ("Cruz"), about possibly assisting the District with an application and possible agreement for a limitation of appraised value agreement under Chapter 313 of the Texas Tax Code ("Agreement"). Underwood appreciates being considered to assist the District in this capacity. It is our understanding that Corazon Energy, LLC, an affiliate of BayWa Renewable Energy, has advised the District of the intent to file an application (the "Applicant") for a renewable energy project in the District (the "Project"). The purpose of this letter is to advise the District of the services Underwood proposes to provide as attorneys in the limited capacity of assisting with these Agreement. Should the Board choose to engage us, this Letter Agreement will engage Underwood to assist the District with this Project, as well as other projects that may arise in the future.

I. Conflicts and Consent

It is important that Underwood advise the District from the outset that potential conflicts of interest could arise in our representation as legal counsel for the school district and possible representation of other taxing entities with regard to the proposed Agreement and/or any tax abatement agreement. Albeit slight, we feel the District should be informed so that the decision to proceed with this representation is well informed and made freely and voluntarily. Underwood has practiced in Texas since 1912 and represents a variety of political subdivisions. At present, we represent over 180 other school districts in Texas, as well other governmental entities, including educational service centers, hospital districts, counties and municipalities. Additionally, Underwood represents a variety of manufacturers, businesses, banks and other financial institutions. It is possible that while we are representing the District, one or more of

UNDERWOOD LAW FIRM, P.C.

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our present or future clients could have dealings with the District or be a party to its own agreement.¹

The District recognizes that Underwood will work in conjunction with Cruz throughout the Chapter 313 process and authorizes both Underwood and Cruz to exchange any and all information relating to the Project as necessary to represent the District.

II. Attorney/Client Relationship

By executing this Letter Agreement, an attorney/client relationship will exist between the District and the Underwood Law Firm as to the current application and any future applications. In this regard, the services provided by Underwood under this Letter Agreement are limited to those services specified herein. Execution of this Letter Agreement serves as an acknowledgement of those limitations.

It is very important to maintain the confidentiality of our communications (oral and written) because our attorney-client communications with the District are privileged and confidential. Often, email is the most efficient way for the District to communicate with us and vice-versa. Because communications sent over the internet could be misdirected, intercepted or reviewed by unauthorized individuals, the exchange of confidential or sensitive information by internet email may not be secure and confidentiality may be lost. Accepting these risks, the District agrees that we may communicate through internet email, unless we are advised to the contrary.

The District may terminate the relationship at any time for any reason upon written notice to us. Subject to any ethical requirements, Underwood may likewise terminate the relationship upon written notice.

Underwood's representation and the attorney/client relationship created by this Letter Agreement with regard to each Agreement will be concluded upon execution of each Agreement, absent any other post-closing matters that may need to be concluded or upon the District's rejection of a manufacturer's or developer's application, whichever is appropriate.

III. Scope of Services

As legal counsel, Underwood will perform the following services for any prospective Agreement:

1. Consult, as needed, regarding mandatory procedures and Comptroller rules, and legal risks regarding a school district's participation in the Agreement;
2. Consult with a school finance analyst, on the school district's behalf, who will use district-specific financial models to estimate the potential impact that the

¹ Applicants may seek agreements with other taxing entities and/or add or reduce the amount of land needed for each Project. Accordingly, Underwood could be asked to represent additional governmental entities with regard to this Project, and has represented multiple governmental entities before on a single project without adversely affecting any client.

- proposed Agreement may have on the District;
3. Coordinate with Cruz throughout the Chapter 313 process;
 4. Retain and consult with an economist on the District's behalf (if needed), to develop an independent economic impact evaluation;
 5. Coordinate with the Texas Comptroller's office to submit and process applications under Chapter 313, as applicable;
 6. Review, with the school finance consultants and any economic consultant, the Comptroller's economic impact evaluation and certification decision concerning any proposed Agreement;
 7. Negotiate, on the District's behalf, an Agreement with the Applicant; and
 8. Prepare one or more written Agreements and assist the District with preparing findings of fact and any and all other legal requirements to obtain such an Agreement.

To enable us to effectively perform the services contemplated, it is essential that the District discloses fully and accurately all facts and keeps us apprised of all developments; particularly, any District trustees who may have a business interest or business relationship with any applicant seeking an agreement under Chapter 313.

IV. General Terms

Underwood will maintain primary contact with the District's general legal counsel, the Superintendent or other designated contact person. However, as the need arises, arrangements can be made to communicate directly with the Board of Trustees. With regard to the Comptroller's processing of any application, the District agrees to provide Underwood with all necessary background information concerning the application and any other economic or financial information that may be needed by the consultants hired by the District or on its behalf. With regard to school finance consultants, it is Underwood's understanding that the District intends to retain Moak Casey & Associates under a separate agreement.

It is important to remember that absent some inadvertent disclosure by the District, any information learned by Underwood shall remain confidential until an Agreement is executed, unless the release of such information has been authorized by law, the District or is required under the Texas Public Information Act, Texas Govt. Code §552.001, *et seq.*

In compliance with Section 2270.002 of the Texas Government Code, the Underwood Law Firm verifies that it: (1) does not boycott the state of Israel; and (2) will not boycott the state of Israel during the term of this Letter Agreement.

V. Fees and Records

Our fee for providing the services contained herein for the District is \$37,500 the contemplated application and any future applications. However, we understand different circumstances may arise from time to time that could require a negotiated fee for a future application. Each fee is only due and should be paid by the District from and on receipt of an application and accompanying application fee from the manufacturer or developer. No fees shall

be due or owing for pre-application services that may have been provided, unless and until the manufacturer or developer submits an application and application fee. These fees do not include extraordinary expenses incurred on the District's behalf, if any. But typical expenses such as travel costs, photocopying, deliveries, long distance telephone, telefaxes and filing fees, if any, are included in our fee. These fees also include the cost incurred for retaining the services of an economist, if needed. Underwood reserves the right to seek additional fees for extenuating circumstances that could arise in a transaction of this magnitude, such as having to engage school finance consultants to provide additional or alternative school finance studies. If, for some reason, the Application and fee are tendered, but an Agreement is not consummated, it is our understanding that we will retain our fees for preparing and assisting the District with each proposed Agreement, as necessary and as described above.

If, following the execution of an Agreement, we have to provide services not specified in this Letter Agreement, assist the District in defending any suit seeking to invalidate an agreement or with regard to the rights and obligations of any of the parties to the agreement, or any post-closing matter (such as amending the Agreement, responding to information requests from the Comptroller on the District's behalf, assisting with audits by the State Auditor's Office or securing documents in compliance with the Comptroller's rules) such representation will be billed at the regular hourly rate of the lawyer(s) working on such matter. Fees for such services rendered are separate from any fees paid for services provided under this Letter Agreement, unless a different fee arrangement is agreed to by the parties, and shall be due and owing at the time billed.

After you have reviewed this letter, and if its terms are acceptable to the District, please have this Letter Agreement executed by the properly authorized individual and return the original to Underwood. You may retain a copy of the original for the District's records.

Thank you for your consideration in this matter. We look forward to working with you on this Project.

Sincerely,

UNDERWOOD LAW FIRM, P.C.



Fred Stormer

FS/ph

ACCEPTED AND AGREED TO BY:

UNITED INDEPENDENT SCHOOL DISTRICT

Name: _____

Title: _____