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March 11, 2016

Via Email

Dr. James Monaco
Chief Financial Officer
Aubrey Independent School District
415 Tisdell Lane
Aubrey, Texas 76227

Re: Contract for Custodial Services

Dear Dr. Monaco,

The Aubrey Independent School District (“District”) asked our firm for an opinion letter regarding the Service Agreement (“Agreement”) with ACBMS, LLC for custodial services, which was entered into on March 24, 2013. Specifically, you asked whether the District could agree to pay a higher amount for custodial services if it renews the Agreement in 2016. As discussed below, the District can reach such an agreement, provided the amount of the increase is “justifiable” and is not more than 5% of the amount the District was paying at the end of the term.

The Agreement states that ACBMS will provide custodial services to the District for a three-year period from June 1, 2013 through May 31, 2016.¹ The District reserved the right to renew the Agreement for two additional one-year terms, after the expiration of the term ending in May 2016.²

Paragraph 2.2 explains that the contract price may be increased at the time the District renews the Agreement:

“At the time of renewal the pricing on this contract may be increased, decreased or remain the same. If increased, the increase must be justifiable and the amount may not exceed 5% over the previous period.”

Notably, these sections do not *require* that the District pay an increased fee upon renewal, but they allow for negotiations on an appropriate fee increase at the time of renewal.

Further, paragraph 10.1(d) states that the fee for the last 24 months of this agreement will be negotiated by both parties.³ In addition to the language in paragraph 2.2, this section further indicates that the parties may negotiate an increase in the fee paid during the fourth and fifth years of service.

¹ Agreement, p. 1, ¶ 2.2.

² Agreement, p. 1, ¶ 2.2.

³ Agreement, p. 4, ¶ 10.1.

July 28, 2015

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Although paragraph 10.1(c) states that the fee for months 37-48 (which would correspond with year four of service) will be \$34,500.00 per month, paragraphs 2.2 and 10.1(d) clearly allow the parties to negotiate an increase for custodial services in year four, if the Agreement is renewed.⁴ Paragraph 10.1(c) may be interpreted to set the fee the District would pay if the parties renewed the Agreement but did not discuss price at the time of renewal.

There are two requirements for an increased fee. First, the increase may not exceed 5% of the fee currently paid by the District.⁵ Second, the increase must be “justifiable.”⁶ In other words, there must be a logical, valid reason for the increase. I have been informed that the District is considering increasing the fee so a raise may be given to the custodial employees who clean the District’s buildings. This appears to be a reasonable and justifiable rationale for the increase. If the District wants to ensure that the increased fee will result in increased compensation for these custodial employees, a sentence could be added to the Service Agreement Renewal specifying that these individuals will receive an increase in their pay and state the amount or percentage of their increased compensation.

If you have any questions, please contact me.

Sincerely,



Christie Hobbs

⁴ Agreement, p. 4, ¶ 10.1. It is my understanding that the parties intend to renew this Agreement. A Service Agreement Renewal has been drafted for this purpose.

⁵ Agreement, p. 1, ¶ 2.2

⁶ Agreement, p. 1, ¶ 2.2.