



# UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

**TOPIC:** Discussion and possible action on moving forward with the Sale of the seventeen (17) and three (3) acre tracts of real property located East of Loop 20 and next to the UISD Food Distribution Center as approved by the Board of Trustees at its July 3, 2014 Special Called Board Meeting

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

**APPROVED FOR TRANSMITTAL TO SCHOOL BOARD:** \_\_\_\_\_

**DATE ASSIGNED FOR BOARD CONSIDERATION:** July 23, 2014

**RECOMMENDATION:**

It is recommended that the Board of Trustees take possible action on moving forward with the Sale of the seventeen (17) and three (3) acre tracts of real property located East of Loop 20 and next to the UISD Food Distribution Center as approved by the Board of Trustees at its July 3, 2014 Special Called Board Meeting

**RATIONALE:**

**BUDGETARY INFORMATION:**

**POLICY REFERENCE & COMPLIANCE:**



LANGLEY & BANACK  
INCORPORATED

PETER L. KILPATRICK  
BOARD CERTIFIED - CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

Attorneys and Counselors at Law

E-MAIL: [pkilpatrick@langleybanack.com](mailto:pkilpatrick@langleybanack.com)

July 15, 2014

VIA FAX: 956-717-0539

Mr. Juan Cruz  
Mr. Fortunato G. Paredes  
Mr. Orlando Juarez, Jr.  
J. Cruz & Associates, LLC  
216 W. Village Blvd., Suite 202  
Laredo, TX 78041

RE: Cause No. 2014CV7000707D4; *United Independent School District* ("UISD" or "District") v. *K.R.K., Limited* ("KRK") and *KCOM Managers, LLC* ("KCOM"), 406<sup>th</sup> Judicial District Court, Webb County, Texas ("Lawsuit").

Dear Counsel:

Thank you for hosting the teleconference this afternoon regarding KRK and KCOM's settlement offer. At your invitation during the telephone settlement conference this afternoon, this letter is sent in the spirit of T.R.E. 408 in the interest of attempting to settle all the issues in the above-referenced lawsuit and obtain a mutual release between the parties.

UISD was certainly within its rights to pursue a competitive bidding process if that was its desire. However, given the circumstances of UISD and KRK being adjoining property owners and UISD's previously-stated position that its 17-acre property is without public access, based on that position the Local Government Code would have given UISD and KRK a basis to have entered into negotiations toward a contract of sale at a mutually agreeable price without the requirement of a competitive bid process.

The Texas Local Government Code does not require a minimum bid. Nor does it require an appraisal to fix a minimum price. The process set forth in the bid process is the very process that is designed to yield a fair market value to UISD. Nevertheless, Shahram Khaledi submitted the bids per 2014-080 (3 acres) and 2014-081 (17 acres), subject to a mutual release being executed between the parties to the Lawsuit and a resulting dismissal of the Lawsuit with prejudice. It is our understanding that UISD accepted such bids subject to such contingency.

At your request, let me restate the settlement offer so that you can present same to the Board of your client in closed session per our discussions.

TRINITY PLAZA II • 745 EAST MULBERRY, STE 900  
SAN ANTONIO, TEXAS 78212-3166 • T 210.736.6600 • F 210.735.6889  
[WWW.LANGLEYBANACK.COM](http://WWW.LANGLEYBANACK.COM)

SAN ANTONIO • CARRIZO SPRINGS • EAGLE PASS • KARNES CITY • CASTROVILLE

July 15, 2014  
p. 2

As I understand UISD's prior litigation demands and position, KRK and/or KCOM would be able to require UISD or its purchaser to incur up to \$250,000 in liability with respect to sharing costs in a road or other drainage improvements on our clients' property. As you also know, KRK and KCOM would have claims for their own attorney's fees.

To provide a mutual release, KRK and KCOM will accept \$250,000 in settlement to give up their rights to require the owner of the 17-acre tract to reimburse it for certain road and drainage expenses KRK had the right to require. KRK and KCOM would also forego attorney's fees in connection with anticipated counterclaims in the Lawsuit, and exchange a mutual release with the District and have the Lawsuit dismissed with prejudice, including any and all claims our clients could have made in such Lawsuit.

This would pave the way for Shahram or his assignee to go forward on purchasing the 3 and 17 acre properties from the District. I respectfully disagree with the notion that Mr. Khaledi's bid was not contingent on the parties in the Lawsuit executing a mutual release. Paragraph 4a in the Attachment to the Bid Form provides that that "Bidder requires that Seller resolve [the Lawsuit and that] Seller obtains a comprehensive release from K.R.K. Limited and KCOM Managers LLC as to any claims affecting the 17 acres... including obtaining a release of any actual or potential counterclaims by said Defendants in the Lawsuit."

It is not our clients' contention that the properties sell at below fair market value. Indeed, Shahram Khaledi stands by his bids. It is merely that the parties to the Lawsuit must also enter into a mutually agreeable settlement agreement in connection with the Lawsuit for Shahram Khaledi to pursue the purchase. Even if one pretended there was no lawsuit with claims by KRK and/or KCOM, respectfully, we do not believe the appraised amount as to the 17 acres (was the basis of the District setting a "minimum price") is a fair assessment of fair market value as to that property. For example, inexplicably, the appraisal uses KRK's adjoining property as a comparable when our client's property has a major percentage of its property fronting the access road, whereas UISD has asserted its own 17-acre property is landlocked. Respectfully, our client's adjoining property should never have been used as a "comparable" for purposes of setting a value of the subject 17 acres. This is far from an apples-to-apples comparison. To assist you in evaluating our view on this issue, I am herewith providing you a copy of the May 2013 appraisal in connection with our client's acquisition of the adjoining property. In accordance with our earlier exchange of email, this is provided to you for purposes of your and the Board's executive session consideration, and is not to be used or disclosed to third parties.

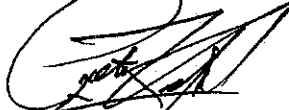
Mr. Santos indicated today that the District has a continuing need to use the improvements on the 3 acres through June 2015. As I indicated on behalf of Shahram Khaledi this afternoon, he would have no quarrel, as part of an overall settlement and sale, to allow the District to continue occupying the property through June 2015 as long as UISD maintains the appropriate insurance and responsibility for property taxes during its tenancy. The value of that "lease back" is significant, but Mr. Khaledi would forego such rental income upon purchasing the 3-acres as part of the framework above.

July 15, 2014  
p. 3

This settlement offer is open until the end of July 24, 2014, the day after the District's next Board meeting. If you or the Board have any questions as to KRK and KCOM's settlement offer, please let me know.

Sincerely,

**LANGLEY & BANACK, INC.**

A handwritten signature in black ink, appearing to read "Peter L. Kilpatrick", is written over the printed name below.

Peter L. Kilpatrick

cc: K.R.K. Limited  
KCOM Managers, LLC