

# BRACEWELL

March 10, 2021

Ms. Shawna Burkhart  
City Manager  
City of Bay City, Texas  
1901 Fifth Street  
Bay City, TX 77414

Re: Addendum to Engagement Letter – City of Bay City, Texas

Dear Ms. Burkhart:

Thank you for engaging us to represent the City of Bay City, Texas (“City” or “Client”) as special counsel to the City. We appreciate the confidence you have shown in Bracewell LLP (“Bracewell” or “Firm”) and look forward to this opportunity to represent your interests.

This addendum to our existing bond counsel engagement letter is for the purpose of adding an additional matter to our scope of services. The Terms of Engagement attached to this addendum will replace those included in the original engagement letter. This addendum has been approved by Bracewell subject to the conditions described in this letter.

A. Scope of Engagement

Bracewell will represent Client in connection with advice and counsel regarding the creation of one or more public improvement districts (each, a “PID”) and the negotiation of related development agreements (each, a “Development Agreement”) with the developer(s) undertaking development within the PID (each, a “Developer”) of the PID. Bracewell will also represent the City in connection with its issuance, from time to time, of bonds, and other debt obligations (“Obligations”) related thereto.

We agree that our services as counsel to the City in connection with PID matters may include the following as directed by the City:

1. Drafting the Development Agreement and other City documents relating to the PID, including policies and procedures for creation of a PID by the City;
2. Drafting documents relating to the creation of the PID and the levy of Assessments;

**Bracewell LLP**

T: +1.713.223.2300 F: +1.800.404.3970  
711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770  
bracewell.com

AUSTIN CONNECTICUT DALLAS DUBAI HOUSTON LONDON NEW YORK SAN ANTONIO SEATTLE WASHINGTON, DC

3. Attendance at all meetings of the City Council as required or requested in connection with the planning and authorization of Obligations, including consultation on federal income tax matters;
4. Preparation of the ordinances of the City Council authorizing issuance of Obligations, together with all other legal documents comprising the transcript of proceedings for authorization and issuance of Obligations;
5. Preparation of and submission to the Attorney General of Texas of a transcript of proceedings for each series of Obligations to obtain the approval of the Attorney General and registration of Obligations by the Comptroller of Public Accounts of Texas;
6. Preparation and filing of legal documents required under federal income tax law for the Obligations;
7. Representation of the City at the closing of the sale of Obligations, including preparation of all closing documents; and
8. If appropriate, the delivery at closing of our approving opinion as to the validity of the Obligations under Texas law, and the exclusion of interest on the Obligations from gross income of the holders under federal income tax law.

The services outlined above do not include such matters as services as disclosure counsel in connection with the sale of the Obligations, work on post-closing federal tax or disclosure issues, obtaining IRS rulings or clarifications of federal tax law, presentations to rating agencies or bond insurers, or “blue sky” or securities registration services. We will be pleased to provide legal services in connection with any matters not included in paragraphs 1 through 8 above, but we believe that such additional services, if requested by the City, should be the subject of an addendum to this letter or a separate letter of engagement. Our representation of the City with respect to any particular series of Obligations will end upon the closing for that particular series of Obligations.

This Engagement Letter may be supplemented to reflect new matters or issues that deviate from the current engagement in scope, billing arrangements, complexity, risk, or that otherwise require a substantial change in terms and conditions. The Terms of Engagement, however, will govern all projects and engagements for Client.

B. Fees, Expenses and Billing

1. Third Party Payment of Certain PID Creation Fees

Bracewell acknowledges that Client intends to pay the portion of the legal fees, other than bond counsel fees, related to this engagement from an escrow account funded the developers participating in such PIDs (each a “Developer”). Invoices will be delivered to Client. Client is Bracewell’s only client in this engagement; no attorney-client or other relationship exists between Bracewell and the Developer, and the Developer will not have any authority as to the performance of this engagement. Client understands and consents to fees and expenses being paid from funds deposited by the Developer.

2. Development Agreement Related Fees.

Legal fees incurred in connection with the development of City policies or the negotiation of the Development Agreement may be paid from the proceeds of the Obligations to be issued by the City in connection with the PID. Such fees shall be in addition to any fees due under Section C of this Agreement. However, if Obligations are not expected to be issued or have not been issued within twelve months of the execution of the Development Agreement or if the Development Agreement is not executed, the Firm will invoice the City for such fees and expenses, and the City will be responsible for the timely payment of such fees and expenses.

Fees described in paragraphs 1 and 2 will be based primarily on an hourly charge determined by the amount of time devoted by Bracewell professionals to perform the legal services contemplated by this engagement. Other factors authorized by Rule 1.5(a) of the ABA Model Rules of Professional Conduct also may be considered when determining the fees charged by Bracewell.

Billing rates for our attorneys vary according to the experience of the individuals. Our current billing rates for those attorneys in our section who you might ask to work on your matter range from \$250 an hour for the most junior associate to \$950 an hour for the most senior partner. In an effort to reduce overall legal costs, we utilize paralegal and administrative assistant personnel whenever appropriate. Time devoted by such paralegal personnel to client matters is currently charged at billing rates generally ranging from \$150 to \$350 per hour. Billing rates for attorneys, paralegal and administrative assistant personnel are, from time to time, reviewed and adjusted.

Matters involving the production of electronically stored information may result in additional fees and expenses being incurred by the Firm and/or by third-party vendors on behalf of Client. See the attached Terms of Engagement for more details.

3. Ongoing PID Administrative Related Fees.

Legal fees relating to the ongoing administration of the PID, including the review of annual updates to the Service and Assessment Plan, shall be billed at our hourly rates determined by the amount of time devoted by Bracewell professionals to this work. Our fees for ongoing administration of the PID will be paid from assessments levied for administrative costs within the PID.

C. PID Bond Counsel Fees

Our services as Bond Counsel under this Letter will commence following the adoption of a Service and Assessment Plan for a public improvement district. Any services provided prior to the adoption of the Service and Assessment Plan shall be addressed as provided in Section B of this Letter. For our services as bond counsel in connection with the authorization, issuance and sale of each series of public improvement district Obligations, the City will pay us, from the proceeds of sale of each issue or installment of the Obligations, the following:

1. an amount equal to 3% of the first \$5,000,000 in principal amount of such Series of Obligations; and

2. 2-1/2% of the principal amount of such Series of Obligations above said first \$5,000,000 in principal amount but not exceeding \$10,000,000 in principal amount; and
3. 2% of the principal amount of such Series of Obligations above \$10,000,000 in principal amount but not exceeding \$15,000,000 in principal amount; plus
4. an amount equal to 1-1/2% of the principal amount of such Series of Obligations above \$15,000,000 in principal amount.

The above fee schedule shall be applicable to each separate series, issue or installment of Obligations, but shall only be due with respect to Obligations actually issued, sold and delivered. Our fee for bond counsel services for any separate issue or installment of Obligations shall not be less than \$50,000. Our fee for serving as bond counsel on any issue of refunding bonds for the refunding of any Obligations will be 1% of the principal amount of such bonds, but not less than \$50,000.

If the City chooses to issue bond anticipation notes in connection with a bond issue, our fee for such services will be 1% of the principal amount of such note, but not less than \$10,000.

Thank you again for the opportunity to represent you in this matter.

Very truly yours,

Bracewell LLP

Jonathan K. Frels  
Partner

AGREED AND ACCEPTED:

**City of Bay City, Texas**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**BRACEWELL LLP**

**TERMS OF ENGAGEMENT**

**Introduction**

These are the Terms of Engagement adopted by Bracewell LLP ("Bracewell") and the addressee of the preceding Engagement Letter ("Client") and referred to in our Engagement Letter as the basis for our representation. Because they are an integral part of our agreement to provide representation, we ask that you review this document carefully and retain it for your files. If you have any questions after reading it, please promptly inform your principal contact at the Firm.

**Client of the Firm**

Because Bracewell has been engaged to represent the Client only, the engagement does not include the Client's family members, affiliated or related entities, or their respective individual officers, directors, partners, equity owners or employees.

Unless otherwise specifically stated in the Engagement Letter, our representation does not include any parent, subsidiary, or affiliated entity; employee, officer, director, shareholder, member or partner of an entity; or, any commonly owned entity. For any trade association, our representation does not include any member of the trade association; and for individuals, our representation does not include any employer, partner, spouse, sibling, or other family member. In the event we are asked to undertake representation of any other entity in connection with this engagement, we will do so only by agreement defined in the Engagement Letter.

**Our Relationship with Others and Conflicts of Interest**

We have performed a conflicts check on the names you provided to Bracewell. Based on a check of these names, and under the applicable standards in the governing rules of professional conduct, we believe Bracewell is free to undertake the Matter. If we identify a conflict after work on this Matter has begun, you agree to use reasonable efforts to help us resolve the conflict to the satisfaction of all parties.

Bracewell accepts this engagement on the understanding that our representation of you will not preclude us from accepting another engagement from a new or existing client provided that (1) such engagement is not substantially related to the subject matter of services we provide to you and (2) such other engagement would not impair the confidentiality of related client information.

**Billing Arrangements and Terms of Payment**

Fees for professional services and expenses are not contingent on the outcome of the project, unless expressly stated in the Engagement Letter.

Bracewell issues invoices on a periodic basis, normally each month, for fees and expenses. Invoices are due on receipt and are considered past due 30 days after receipt.

Clients frequently ask us to estimate the fees and other charges they are likely to incur in connection with a particular matter. Any estimate is based on professional judgment and facts and circumstances

that appear at the time. As such, any estimate is subject to the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

It may be necessary for us to retain third parties, such as consultants, experts and investigators, in order to represent you adequately. In that event, you will be responsible for the prompt payment of the invoices of those third parties. Although we may advance third-party disbursements in reasonable amounts, we will ask you to pay larger third-party invoices (usually those over \$500) directly to the third party providing the services.

If the representation will require a concentrated period of activity, such as a trial, arbitration, or hearing, we reserve the right to require the payment of all amounts owed and the prepayment of the estimated fees and expenses to be incurred in completing the trial, arbitration, or hearing, as well as arbitration fees likely to be assessed. If you fail to pay timely the estimated fees and expenses, we will have the right to cease performing further work and the right to withdraw from the representation, subject to any applicable rules of court or other applicable tribunal.

Although an insurer's payment of defense costs may be applied to billings of the firm, the payment obligation remains with you. Failure of any insurer to pay all or part of the billings for this project does not relieve you from the obligation to pay billings in full and in a timely manner.

#### **Matters Involving e-Discovery**

Many matters require the handling or production of electronically stored information ("ESI"). In litigation, the rules of civil procedure in federal court, as well as in many other jurisdictions, address the gathering and production of ESI ("e-Discovery"). Failure to comply with the rules governing e-Discovery can subject Client and the Firm to possible discovery sanctions. The Firm has developed an e-Practice Department (the "e-Department") to assist the Firm's clients in litigation matters that involve e-Discovery issues. The e-Department head, a lawyer who specializes in e-Discovery matters ("e-Practice Counsel"), and the e-Practice Project Managers will assist Client in handling e-Discovery projects that may arise in connection with the Firm's representation of Client.

The Firm has identified a number of preferred e-Discovery providers that it can recommend to Client ("Outside Vendors"). Client will make the ultimate decision on which Outside Vendor to retain on a matter. Client will contract directly with and will be invoiced by the Outside Vendor for e-Discovery services. In most cases, the Outside Vendor will handle the collection, processing, hosting, and production of Client's ESI. The Firm's e-Department professionals will serve as a liaison between Client, the Outside Vendor and the Firm's attorneys throughout the process, and the Firm will bill the Client for that time. Unless other arrangements are made between the Firm and Client, the Firm's lawyers will handle the review of Client's ESI before production.

Certain matters involving less than 5GB of ESI can be handled by the Firm internally, rather than by an Outside Vendor. In such matters, and upon prior agreement between Client and the Firm, an Outside Vendor will collect the Client's ESI and deliver to the Firm for processing, hosting, review and production. Client will contract directly with the provider for the collection of the ESI. The Firm will charge the client from \$150 to \$250 per GB for processing, depending on the format of the data, and from \$20 to \$40 per GB per month for hosting/storage, depending on the volume of the data.

It is anticipated that the Firm's e-Department professionals will assist Client in both e-Discovery matters handled by Outside Vendors and those handled by the Firm internally. The Firm will bill Client for the time of these professionals.

The hourly rate of the Firm's e-Practice Counsel is \$450 per hour. The range of hourly rates for the Firm's e-Practice Project Managers is \$225 - \$300 per hour. The hourly billing rates of the Firm's e-Department professionals are set, reviewed and adjusted by Bracewell on an annual basis and will appear on the periodic invoice provided for this engagement.

#### **Interest on Past Due Accounts**

If Client fails to pay any invoice when due, the past due amount shall accrue interest at the rate of six percent (6%) per annum, beginning on the date due until paid in full. Such interest shall be calculated based upon a year of 365/366 days (as applicable) for the actual number of days the invoice has been outstanding beyond the due date, and shall be compounded monthly. Such interest shall be payable upon demand and will be invoiced separately. The total interest due on past due invoices is available upon inquiry.

#### **Taxes**

The Client agrees that all payments under the Engagement Letter shall be payable to Bracewell in U.S. Dollars, free and clear of any and all present and future taxes, levies, imposts, duties, deductions, withholdings, fees, liabilities and similar charges (the "Taxes"). If any Taxes are required to be withheld or deducted from any amount payable under the Engagement Letter, then the amount payable under the Engagement Letter shall be increased to the amount which, after deduction from such increased amount of all Taxes required to be withheld or deducted therefrom, will yield to Bracewell the amounts stated to be payable to Bracewell under the Engagement Letter.

#### **Termination**

Because Bracewell has been engaged to provide services in connection with the representation specifically defined in our Engagement Letter, the attorney-client relationship terminates upon our completion of those services.

You may terminate the engagement at any time, with or without cause, by notifying us in writing. The firm also can terminate the engagement before the completion of its representation of you in the specified matter if (a) the continued representation would result in a violation of the applicable rules of professional conduct or other law; (b) the termination can be accomplished without material adverse effect on your interests; (c) you persist in a course of action that Bracewell reasonably believes is criminal or fraudulent, or you have used our services to perpetrate a crime or fraud, (d) the firm has a fundamental disagreement with the objective or tactics in this engagement; (e) you deliberately and substantially fail to discharge an obligation regarding this engagement, including the payment of fees and expenses and the duty of cooperation as provided in the Terms of Engagement; or (f) other good cause for termination exist. In the event that the firm intends to terminate the engagement, the firm will give reasonable notice and allow you access to your files relating to this engagement.

For purposes of this Engagement Letter, this engagement terminates upon written notice of termination by Client or by Bracewell, or 120 days after the date of Bracewell's last substantive legal service billed to Client's account, whichever may first occur.

The termination of our services will not affect your responsibility for payment of legal services rendered and other charges incurred before termination and in connection with an orderly transition of the project.

After completion of the representation, however, changes may occur in the applicable laws or regulations that could affect your future rights and liabilities in regard to the matter. Bracewell has no continuing obligation to give advice with respect to any future legal developments that may relate to the project.

### **Disposition and Retention of Materials**

Bracewell has adopted and implemented an information governance and records management program including a comprehensive policy and records retention schedule. At the close of any matter Bracewell may return Client documents and property, send them to a storage facility for a limited time, or have them destroyed according to our records retention schedule. At Client's request, Client documents and property will be returned to you upon receipt of payment for outstanding fees and costs. Your request must be specific and designate your representative to receive the files. Client is responsible for paying the reasonable cost to retrieve, duplicate and deliver the Client files. Your request for return of Client files must be delivered to Bracewell no later than 120 days after the last substantive service relating to the closed matter. A substantive service does not include audit letter research and preparation, or any other service that does not directly relate to the substantive discharge of a Client engagement.

You agree that Bracewell owns and retains its own files, inclusive of related electronically stored information, pertaining to the engagement. You will not have the right or ability to require us to deliver such files (or copies thereof) to you. Examples of Bracewell files are: firm administrative materials, financial files and documents, time and expense reports, personnel and staffing materials, credit and accounting records, electronic mail correspondence (other than such correspondence which was sent to you by a member of our firm) and internal lawyer's work product, such as drafts, notes, memoranda and legal and factual research, including investigative reports prepared by or for the internal use of lawyers.

It is important for Client to alert Bracewell in advance of special treatment, sensitive information, retention requirements and other unique conditions pertaining to Client files. Client agrees that it will notify Bracewell in a timely, written and specific manner, concerning any requirement for special or unusual handling or attention of its Client files. This includes any statutory or regulatory requirements relating to confidentiality and retention of Client files.

### **Choice of Law**

Because Bracewell performs legal services in a number of jurisdictions, for consistency and predictability, the Client and Bracewell agrees that the Texas Disciplinary Rules of Professional Conduct (found at [www.texasbar.com](http://www.texasbar.com) or [www.legalethictexas.com](http://www.legalethictexas.com)) will govern all issues of legal ethics and professionalism.

Pursuant to Texas Government Code section 81.079, we are required to provide you with notice of the existence of the State Bar of Texas grievance process. That information can be found here: [www.texasbar.com/AM/Template.cfm?Section=File\\_a\\_Grievance&Template=/CM/ContentDisplay.cfm&ContentID=23454](http://www.texasbar.com/AM/Template.cfm?Section=File_a_Grievance&Template=/CM/ContentDisplay.cfm&ContentID=23454) (English)



[www.texasbar.com/AM/Template.cfm?Section=File\\_a\\_Grievance&Template=/CM/ContentDisplay.cfm&ContentID=23636](http://www.texasbar.com/AM/Template.cfm?Section=File_a_Grievance&Template=/CM/ContentDisplay.cfm&ContentID=23636) (Spanish).

### **Disclaimer**

We cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control.

Either at the commencement or during the course of the representation, we may express opinions or beliefs about the matter or various courses of action and the results that might be anticipated. Any expressions on our part concerning the outcome of the representation, or any other legal matters, are based on our professional judgment and are not guarantees.

By signing the Engagement Letter or otherwise indicating your acceptance of the Engagement Letter, you acknowledge that Bracewell has made no promises or guarantees to you about the outcome of the representation, and nothing in these Terms of Engagement shall be construed as such a promise or guarantee.

### **Your Cooperation**

To enable us to provide effective representation, you agree to: (1) disclose to us fully, accurately and on a timely basis, all facts and documents that are or might be material or that we may request; (2) keep us apprised on a timely basis of all developments relating to the representation that are or might be material; (3) attend meetings, conferences, and other proceedings when it is reasonable to do so; (4) provide updated information for conflicts purposes, if necessary; and (5) cooperate fully with us in all matters relating to the engagement.

### **Modification of Our Agreement**

The Terms of Engagement reflect our agreement on the terms of all engagements, and are not subject to any oral agreements, modifications, or understandings. Any change in these Terms of Engagement must be made in writing signed by both Bracewell and Client.

**Anti-Boycott Verification.** The Firm hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Engagement is a contract for goods or services, will not boycott Israel during the term of this Engagement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. As used in this paragraph, the Firm understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Firm within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Iran, Sudan and Foreign Terrorist Organizations.** The Firm represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Firm and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. As used in this paragraph, the Firm understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Firm within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Energy Company Anti-Boycott Verification.** The Firm hereby verifies that to the extent that this Engagement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session ("SB 13")), as amended, neither the Firm nor the parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, of the Firm boycott energy companies and, such entities will not boycott energy companies during the term of this Engagement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 809.001 of the Texas Government Code. As used in this paragraph, the Firm understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Firm within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**No Discrimination Against Firearm Entity Verification.** The Firm verifies that to the extent this Engagement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, neither the Firm nor the parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, of the Firm have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and such entities will not during the term of the Engagement discriminate against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning in Section 2274.001(3) of the Texas Government Code, and "firearm entity" and "firearm trade association" have the meanings provided in Section 2274.001(6) and (7) of the Texas Government Code (as added by SB 19). As used in this paragraph, the Firm understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Firm within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**In Conclusion**

If you have questions or concerns, at any time, relating to the terms and conditions of this engagement, the services or advice provided by Bracewell, or the fees and expenses reflected in the invoices, please bring them to the attention of your principal contact at our firm, or Bracewell's General Counsel or Managing Partner.