

RESOLUTION NO. 2021-24

**RESOLUTION AUTHORIZING HIRING OF
BOND COUNSEL ON A CONTINGENCY FEE BASIS**

THE STATE OF TEXAS	§
COUNTY OF TRAVIS	§
CITY OF MANOR	§

WHEREAS, the City of Manor, Texas (“City”) has a substantial need for legal services in connection with the issuance of public securities or the administration of its affairs that pertain to the issuance of public securities as contemplated by Tex. Govt. Code Section 1201.027 (the “obligations”); and

WHEREAS, the legal services cannot be adequately performed by the attorneys and supporting personnel of the City because the issuance of obligations by the City requires specialized skills and experience and the services of a firm that is a nationally recognized as bond counsel who can opine on the validity and appropriateness of the obligations, when issued; and

WHEREAS, the services required are not typically available and cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because such a contract would require the City to incur costs and expenses which would need to be borne even if the City ultimately determined not to issue obligations. The nature of the bond counsel engagement with Bickerstaff Heath Delgado Acosta LLP of Austin, Texas (“BHDA”), is feasible only because BHDA is agreeing to provide the services on a contingent fee basis and thus bears the risk if the City ultimately determined that it was not practical or feasible to issue the obligations; and

WHEREAS, absent the issuance of obligations, the City does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees; and

WHEREAS, the City, by and through its City Council (the “Council”) and pursuant to all relevant authority, desires to retain and acquire legal counsel and the professional legal services of BHDA regarding the legal matter (“Legal Matter”) of the City’s sale and issuance of public securities as contemplated by the requirements of Subchapter C of Chapter 2254 of the Texas Government Code, which is further described in the attached **Exhibit 1**; and

WHEREAS, the Council has duly posted written notice of its consideration of the decision to hire BHDA in accordance with Section 2254.2036 of the Texas Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS THAT the City Council, for and on behalf of the City and in the public interest, hereby makes the following findings, which incorporate each of the preceding recitals as if fully stated below, and orders and approves the following:

- (1) It is necessary, proper, and advisable for the City and its City Council to be represented by BHDA regarding the Legal Matter due to the legitimate and principal interests of the City and the public as herein described.
- (2) BHDA is hereby retained by the City Council on behalf of the City, and is formally engaged and hired for the Legal Matter, to provide legal counsel and related professional and personal services pursuant to and described in the contract for legal services ("Engagement Agreement"), said agreement being approved in substantially the form attached hereto as **Exhibit 1**.
- (3) The Mayor of the City is authorized and directed to execute the Engagement Agreement on behalf of the City.
- (4) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning in this resolution.
- (5) This resolution shall take effect immediately from and after its passage and enactment.
- (6) All preliminary recitals of this resolution and all attached documents are incorporated by reference as findings of the Council.
- (7) This resolution was considered and approved at a meeting held in compliance with the Open Meetings Act, Chapter 551, Texas Government Code.

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PASSED AND APPROVED this 17th day of November 2021.

Dr. Christopher Harvey, Mayor
City of Manor, Texas

ATTEST:

Lluvia T. Almaraz, City Secretary
City of Manor, Texas

EXHIBIT 1

(Engagement Agreement for Legal Services)

November 17, 2021

The Honorable Dr. Christopher Harvey.
Mayor
City of Manor
105 E. Eggleston Street
Manor, Texas 78653

RE: Bond Counsel Agreement

Dear Dr. Wallace:

This letter is submitted to state our fees and describe the legal services of the undersigned law firm in performing the duties of bond counsel for the City in connection with the issuance of public securities by the City (the “Obligations”) or other financing, as may be assigned to the firm by the City from time to time during the term of this agreement.

Generally, we will perform all usual and necessary legal services as bond counsel in connection with the authorization, issuance, and delivery of the Obligations. Specifically, we will prepare and direct the legal proceedings and perform the other necessary legal services with reference to the authorization, issuance, and delivery of the Obligations, including the following:

1. Prepare all resolutions, ordinances, notices and other instruments pursuant to which the Obligations will be authorized, issued, delivered and secured, including election proceedings, if necessary, in cooperation and upon consultation with the City Council, their consultants, and other legal and financial advisors and consultants of the City.
2. If the Obligation is a refunding issue, prepare documents establishing the escrow agreement with the escrow agent.
3. If an election is required, prepare documents for calling bond election.
4. Attend meetings of the City Council with reference to the authorization and issuance of the Obligations to the extent required or requested.
5. Cooperate with the City Council and all other interested parties in the sale of the Obligations to the purchasers.
6. Submit bond transcript to the Attorney General for approval.

7. Supervise the execution of the Obligations and the delivery thereof to the purchasers.
8. Prepare documents for closings, provide instructions and advice for closings, and attend closings.
9. When the Obligations are issued, we will give our approving opinion covering the validity of the Obligations, the status of the refunded obligations, if any, and the exemption of interest from federal income taxes, it being understood that the approving opinion will be fully acceptable nationally in regular commercial investment banking bond marketing channels.

The fee covering the legal services of this firm, as bond counsel, for the issuance of the Obligations, is as follows:

New Money Obligations

\$20,000 for the first million dollars of Obligations;
\$1.50 per \$1,000 of Obligations thereafter.

Refunding Obligations

\$22,000 for the first million dollars of Obligations;
\$1.50 per \$1,000 of Obligations thereafter.

Also, we would expect to be reimbursed for our actual out-of-pocket expenses reasonably and necessarily incurred in connection with the authorization, issuance, and delivery of such Obligations, *i.e.*, travel, overnight delivery service, photocopies, outgoing facsimile transmissions, courier, Form 8038G preparation, and the Attorney General's filing fee. Our standard terms of engagement and a list of client costs advanced are enclosed.

The foregoing legal services as bond counsel do not include any direct responsibility for the "disclosure obligations" owed to the investing public under the federal securities laws and the various state securities laws, and this is to state that our engagement is not that broad. We will, however, provide assistance to the City in identifying what the City's responsibility is in meeting its continuing disclosure responsibilities.

Your financial advisor will be responsible for the preparation of an Official Statement or any other disclosure document with respect to the Obligations. While we are not responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document, our responsibility will include the preparation or review of any description within the Official Statement of: (i) federal law pertinent to the validity of the Obligations and the tax treatment of interest paid on the Obligations, (ii) the terms of the Obligations, and (iii) our opinion.

Dr. Christopher Harvey
City of Manor
November 17, 2021

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Our fees and expenses in connection with the issuance of the Obligations will be payable at the time of the delivery of and payment for the Obligations, but our fees for these services are wholly contingent upon actual issuance of the Obligations. Should the Obligations not be issued, the City would be responsible only for payment of the costs of any newspaper publications or translation services incurred.

The fees discussed herein do not apply in litigation work in reference to the Obligations or matters separate from that actual issuance of debt. The scope of any litigation representation or other work assigned by the City and the rates fees in respect to these services shall be agreed upon between the City and the undersigned prior to the initiation of services and will be billed monthly.

The arrangement set out in this letter may be terminated by either the firm or the City at any time on 30 days written notice to the other party.

If the arrangement proposed herein is satisfactory, please indicate acceptance hereof by signing the acceptance clause below and return one copy of this letter to the undersigned.

Respectfully submitted,

BICKERSTAFF HEATH DELGADO ACOSTA LLP



Gregory D. Miller

ACCEPTED this the _____ day of November, 2021:

CITY OF MANOR, TEXAS

By: _____

Name: _____

Title: _____

STANDARD TERMS OF ENGAGEMENT

This statement sets forth the standard terms of our engagement as your attorneys. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

1. The Scope of Our Work

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly. We will provide services related only to matters as to which we have been specifically engaged.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

2. Fees For Legal Services

Our charges for professional services are customarily based on the time devoted to the matter, the novelty and difficulty of the questions presented, the requisite experience, reputation and skill requested to deal with those questions, time limitations imposed by the circumstances, and the amount involved and the results obtained. Unless otherwise indicated in writing, our fees for legal services are determined on the basis of the hourly rates of the respective lawyers and paralegals who perform the services. These rates vary depending on the expertise and experience of the individual. We adjust these rates annually, increasing them to reflect experience, expertise, and current economic conditions. We will notify you in writing if this fee structure is modified.

3. Other Charges

All out-of-pocket expenses (such as copying charges, travel expenses, messenger expenses and the like) incurred by us in connection with our representation of you will be billed to you as a separate item on your monthly statement. We have enclosed a description of the most common expenses.

4. Billing Procedures and Terms of Payment

Our fee is contingent upon the closing and delivery of the obligations.

If you have any question or disagreement about any statement that we submit to you for payment, please contact me at your earliest convenience so that we can resolve any problems without delay. Typically, such questions or disagreements can be resolved to the satisfaction of both sides with little inconvenience or formality.

5. Termination of Services

You have the right at any time to terminate our employment upon written notice to us, and if you do, we will immediately cease to render additional services. We reserve the right to discontinue work on pending matters or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent. Additionally, in the event that you fail to follow our advice and counsel, or otherwise fail to cooperate reasonably with us, we reserve the right to withdraw from representing you upon short notice, regardless of the then status of your matter. No termination shall relieve you of the obligation to pay fees and expenses incurred prior to such termination.

6. Retention of Documents

Although historically we have attempted to retain for a reasonable time copies of most documents generated by this Firm, we are not obligated to do so, and we hereby expressly disclaim any responsibility or liability for failure to do so. You must ultimately retain all originals and copies you desire among your own files for future reference.

7. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America. Venue of any case or controversy arising under or pursuant to this Agreement shall be in Travis County, Texas, United States of America.

8. Questions

If you have any questions from time to time about any aspect of our arrangements, please feel entirely free to raise those questions. We want to proceed in our work for you with a clear and satisfactory understanding about every aspect of our billing and payment policies; and we encourage an open and frank discussion of any or all of the matters mentioned in this memorandum.

Client Costs Advanced
Bickerstaff Heath Delgado Acosta LLP

The firm incurs expenses on behalf of clients only when required by the legal needs of the clients. Some cases or matters require extensive use of outside copy facilities, and other cases may not be so paper-intensive. Standard services handled within the firm are not charged, and client specific expenses are billed to the client needing those services. An explanation of the billing structure is as follows:

Not Charged: Secretarial and word processing time, routine postage, file setup, file storage, local or ordinary long distance charges, fax charges, and computerized legal research data charges.

Delivery Services: Outside delivery services are used for pickup and delivery of documents to the client as well as to courts, agencies, and opposing parties. Outside delivery fees are charged to the client at the rate charged to the firm. Overnight delivery services are also charged at the rate charged to the firm. Firm Office Services Department personnel may provide delivery service in urgent situations and charges for such in-house service will not exceed the charge that would be made by an outside service in a similar situation.

Postage: Our postal equipment calculates exact U.S. postage for all sizes and weights of posted material. The rate charged for postage is the same as the amount affixed to the material that is mailed. We will not charge clients for postage on routine correspondence; however, the cost of large-volume mail, certified mail, or other additional mail services will be charged to the client.

Copies and Prints: Our standard rate for black and white copies and prints made by firm personnel is \$0.15 per page. Color copies and prints are charged at a standard rate of \$0.55 per page. These charges cover paper, equipment costs, and other supplies. If savings can be realized within the required time frame by sending copy jobs to subcontractors, the firm uses only qualified legal services copiers and the cost charged to the client is the same as the amount billed to the firm.

Phone Charges: Only charges for conference calls or international calls are charged, and charges are billed at the same amount billed to the firm by the outside provider.

Travel: Attorney and other timekeeper time spent traveling on behalf of a client is billed to the client. Hotel, meals, local transportation, and similar expenses are charged based on receipts and travel expense forms submitted by the attorney. Documentation is available to the client if requested.

Maps: Maps produced in conjunction with a project will be billed at \$50 for each 34 x 44 inch map and \$20 for each smaller map, plus cost (time fees) for preparation.

Other Expenses: Expenses incurred with outside providers in connection with the client's legal services will be paid by the client directly to the outside provider unless specifically arranged in advance. If the firm agrees to pay outside providers, the cost charged to the client is the same as the amount billed to the firm. Examples of such charges include: court reporter fees, filing fees, newspaper charges for publication notices, expert witness fees, consultants and other similar expenses.