

**RESOLUTION NO. 36-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS  
APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY  
AND BICKERSTAFF, HEATH, DELGADO, ACOSTA, LLP FOR REDISTRICTING  
CONSULTATION FOLLOWING THE 2020 CENSUS**

**WHEREAS**, the City of Clute, has experienced growth in the population, as evidenced in the latest decennial census; and

**WHEREAS**, State and Federal Election law requires a deviation of less than 10% between Elective Districts or Wards; and

**WHEREAS**, the City is desirous of complying with said Statutes to ensure Equal Elective Representation for all of our Residents; and

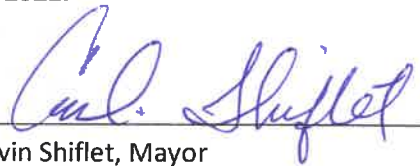
**WHEREAS**, due to the late arrival of Census results for 2020 and compressed timeline for adoption of new Ward boundaries the City is desirous of Professional assistance; and

**WHEREAS**, Bickerstaff, Heath, Delgado, Acosta, LLP have been recognized as leader in the field of Election Law in Texas and is willing to provide such Professional Service to the City.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS THAT:**

The attached Contract for Professional Services between the City and Bickerstaff, Heath, Delgado, Acosta, LLP, related to Council Ward Re-Districting efforts is hereby approved and the Mayor and/or City Manager are hereby authorized to execute said Contract.

**READ, PASSED AND ADOPTED THIS 14<sup>th</sup> DAY OF OCTOBER, 2021.**

  
\_\_\_\_\_  
Calvin Shiflet, Mayor

ATTEST:

  
\_\_\_\_\_  
Rosie Poitevint, City Clerk

# Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expy., Building 1, Suite 300, Austin, Texas 78746

## ENGAGEMENT AGREEMENT

This agreement 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 agreement carefully and contact us promptly if you have any questions. Please retain this agreement in your file.

Identity of Client. We will be representing the interests of the City of Clute, Texas (the "City").

Attorneys. Bickerstaff Heath Delgado Acosta LLP is engaged by you as your attorneys, and I, Sydney W. Falk, Jr., will be the partner who will coordinate and supervise the services we perform on your behalf. We routinely delegate selected responsibilities to other persons in our Firm when, because of special expertise, time availability or other reasons, they are in a better position to carry them out. In addition, we will try, where feasible and appropriate, to delegate tasks to persons who can properly perform them at the least cost to you.

The Scope of Our Work. You should have a clear understanding of the legal services we will provide. We will provide services related only to matters as to which we have been specifically engaged. Although in the future we may from time to time be employed on other matters, our present relationship is limited to representing the above-named client in the matters described in **Exhibit A**. 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.

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 required 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 other timekeepers who perform the services. These rates vary depending on the expertise and experience of the individual. We will only adjust these rates with your consent and will notify you in writing if this fee structure is modified. The initial agreed billing rates for attorneys and other timekeepers engaged on your work are attached as **Exhibit B**.

Other Charges. All out-of-pocket expenses (such as copying charges, travel expenses, messenger expenses, filing and other court costs, and the like) incurred by us in connection with our representation of you will be billed to you as a separate item on your statement. A description of the most common expenses is included as **Exhibit C** and agreed to as part of this agreement.

Billing Procedures and Terms of Payment. Our billing period begins on the 16<sup>th</sup> of the month and ends on the 15<sup>th</sup> of the following month. We will render periodic invoices to you for legal services and expenses. We usually mail these periodic invoices on or before the last day of the month following the latest date covered in the statement. Each invoice is due upon receipt, must be paid in U.S. Dollars, and is considered delinquent if not paid in full within 30 days of its stated date. Payment must be made to the Firm at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, Texas, 78746. We will include all information reasonably requested by you on all invoices and will reference any purchase order number provided by you. Payment and interest, if any, will comply with the Prompt Payment Act (Texas Government Code Chapter 2251), if applicable, for any final invoices. If you have any question or disagreement about any invoice 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.

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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, subject to Court approval if necessary. 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 status of your matter. No termination, whether by you or by us, will relieve you of the obligation to pay fees and expenses incurred prior to such termination.

Retention of Documents. Although we generally attempt to retain for a reasonable time copies of most documents in the possession of this Firm related to the matter(s) described in **Exhibit A**, we are not obligated to do so indefinitely, and we hereby expressly disclaim any responsibility or liability for failure to do so. We generally attempt to furnish copies of all documents and significant correspondence to you at the time they are created or received, and you agree to retain all originals and copies of documents you desire among your own files for future reference. This document serves as notice to you that we will destroy such materials in accordance with the Firm's record retention policy, which may be amended from time to time and a copy of which will be provided at your request. It is our Firm's policy to destroy all copies, whether in paper or electronic form, of materials in connection with the representation seven (7) years after the completion of our work relating to this engagement or the completion of a particular project under this engagement, unless and to the extent an exception recognized in our document retention policy or other legal requirement applies to some or all of the subject materials and requires retention for a longer period of time. The Firm also reserves the discretion to retain its records of pertinent documents relating to its ongoing representation of a client, e.g. in a general counsel capacity. If you would like to obtain copies of materials in the Firm's possession related to this matter prior to the scheduled destruction of the materials, please notify the Firm. Because you will have been furnished with copies of all relevant materials contained in our files during the course of the active phase of our representation, if you later ask us to retrieve and deliver materials contained in a file that has been closed, you agree that we will be entitled to be paid a reasonable charge for the cost of retrieving the file, and identifying, reproducing, and delivering the requested materials to you.

Fee Estimates. We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Our attorneys do their best to estimate fees and expenses for particular matters when asked to do so. However, an estimate is just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, especially in litigation or negotiation situations where the extent of necessary legal services may depend to a significant degree upon the tactics of the opposition. Unless otherwise agreed in writing with respect to a specific matter, all estimates made by us will be subject to your agreement and understanding that such estimates do not constitute maximum or fixed-fee quotations and that the ultimate cost is frequently more or less than the amount estimated.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America, without giving effect to its choice of law's provisions. Venue of any case or controversy arising under or pursuant to this Agreement will be exclusively in Brazoria County, Texas, United States of America.


Standards of Professionalism and Attorney Complaint Information. Pursuant to rules promulgated by the Texas Supreme Court and the State Bar of Texas, we hereby advise you that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. Information on the grievance procedures is available from the State Bar of Texas, and any questions you have about the disciplinary process should be addressed to the Office of the General Counsel of the State Bar of Texas, which you may call toll free at 1-800-932-1900.

Questions. If you have any questions from time to time about any aspect of our arrangements, please feel free to raise those questions. We want to proceed in our work for you with your 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 addressed in this agreement.

Acceptance of Terms. If this arrangement is acceptable to the City, please sign the enclosed duplicate original of this agreement and return it and the required retainer to us at your earliest convenience. We truly appreciate the opportunity to be of service to you and look forward to working with you in a mutually beneficial relationship.

**AGREED TO AND ACCEPTED**

CITY OF CLUTE, TEXAS

By:   
CALVIN SHIFLET

[Printed name]

Title: MAYOR

Date: 10-14-2021

cc: Billing Department

BICKERSTAFF HEATH DELGADO ACOSTA LLP

By:   
**Sydney W. Falk, Jr.**

Date: October 12, 2021

**Exhibit A – Scope of Services**  
Bickerstaff Heath Delgado Acosta LLP

While we agree that in the future we may from time to time be employed on other matters, this agreement provides that our relationship is limited to representing and counseling you in connection with the following:

- Redistricting services based on 2020 census data for the City of Clute, Texas; and
- Other legal services assigned or requested, only if the scope of which is confirmed by you in writing at the time of assignment.

Because of the very short time available for the City to redistrict in order to have a new districting plan in place in time for the May 2022 elections, due to the very late release by the Census Bureau of the census data for redistricting, we may need for the City Council to, among other things: hold special meetings to handle redistricting tasks, to the extent feasible on days and at times we request; meet at times other than those of regular Council meetings; have specific times certain for redistricting matters in meetings having other agenda items; permit our attendance at meetings remotely; and have meeting room capability and suitable internet capability for videoconference attendance, and to display redistricting maps and associated data. In addition, because of the very limited time available, you may: be limited to consideration of just one redistricting plan, with a modest level of fine adjustment; and need to have meetings that accomplish more than one redistricting task (e.g., public hearing on proposed new plan followed by adoption meeting).

Other legal services not assigned or requested, and confirmed in writing, are specifically not within the scope of our representation.

**Exhibit B – Billing Rates**  
Bickerstaff Heath Delgado Acosta LLP

**Initial Assessment**

**\$4,500.00**

The Initial Assessment will consist of the preliminary tasks, post-census initial data analysis, and a presentation and discussion of the Firm's findings with the City Council. If the council districts are determined to be out of balance, we will outline the City's obligations, and produce a timeline for completing the remainder of the redistricting process. We charge \$4,500 for the preparation and presentation of the Initial Assessment, plus out-of-pocket expenses. If the Initial Assessment reveals that the council districts are balanced, and the City decides not to redistrict, no other fees will be assessed unless additional services are requested.

**Redistricting Process**

**Hourly Fee Basis (plus out of pocket expenses)**

Unless otherwise indicated in writing, our fees for legal services related to redistricting are determined on the basis of the hourly rates of the respective lawyers, paralegals and specialists who perform the services, plus out-of-pocket expenses. These rates vary depending on the expertise and experience of the individual and are indicated below.

Senior Attorneys:	\$420-\$480 per hour
Other Attorneys:	\$250-\$375 per hour
Senior GIS Specialist:	\$230 per hour
GIS Specialist:	\$180 per hour
Paralegal:	\$180 per hour

## **Exhibit C—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.

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**Exhibit D—Verification Required by Texas Government Code Chapter 2271**  
Bickerstaff Heath Delgado Acosta LLP

By signing below, Bickerstaff Heath Delgado Acosta LLP hereby verifies the following:

1. The Firm does not boycott Israel; and
2. The Firm will not boycott Israel during the term of this Engagement Agreement.

SIGNED BY: \_\_\_\_\_



**Sydney W. Falk, Jr.**

Date: October 12, 2021

This Verification is incorporated and made a part of the Engagement Agreement between Bickerstaff Heath Delgado Acosta LLP and the City of Clute, Texas.