



June 27, 2019

City of San Marcos  
Michael Cosentino  
City Attorney  
630 E Hopkins Street  
San Marcos, TX 78666  
[MCosentino@sanmarcostx.gov](mailto:MCosentino@sanmarcostx.gov)

Re: SB 1004/SB 1152 litigation

Dear Mr. Cosentino:

Kevin Pagan advises me that the City of San Marcos may approve participation, along with several other Texas cities, in a challenge to the constitutionality of SB 1004 (2017), which relates to the deployment of network nodes in municipal rights-of-way and the fees cities may charge for the use of their rights-of-way, and to the constitutionality of SB 1152 (2019), which can preclude cities from receiving payment for use of their rights-of-way for both cable and telecom.

In this matter, the City of McAllen will be the lead client, responsible for receiving and paying monthly billing statements. In order to facilitate the logistics of billing among what is anticipated to be a large number of cities, each city, including McAllen, will send Bickerstaff Heath Delgado Acosta LLP an amount equal to \$0.15 per resident of the city as shown by the 2010 federal census. Those funds along with any other funds earmarked for the prosecution of the suit will be placed in the Bickerstaff Heath Delgado Acosta LLP Trust Account and will be used to pay the law firm's fees and expenses only after those fees and expenses are incurred and billed. If the funds raised by the initial assessments are not sufficient to complete the litigation, it may be necessary for McAllen to make additional contributions and it may seek contributions from cities and other sources; however, your city will not be required to make an additional assessment to continue as a party to the litigation. At the end of the litigation any funds remaining will be returned proportionately to the participating cities, except that if the additional assessment is exhausted and additional funds are obtained above the amount of the initial assessment, any refund will go to McAllen and any other city providing funds above the amount of their initial assessment and will be computed in proportion to their contribution above the amount of their initial assessment.

I will coordinate primarily with Kevin Pagan. I am enclosing a copy of the City of McAllen's Engagement Agreement with the firm. These terms, other than payment, will also apply to representation of your city.

Michael Cosentino

June 27, 2019

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To document your city's decision to participate in this matter and the firm's authority to represent it, I am enclosing a letter authorizing representation that you should complete and return to me. Along with that letter I am also enclosing a copy of our Conflict of Interest Disclosure and Agreement. It explains the possibility of conflicts arising among the group of cities participating in this matter and states an agreement to waive certain rights that would normally be part of our attorney-client relationship in order to make this joint representation feasible. By executing the letter authorizing representation you are also agreeing to the Conflict of Interest Disclosure and Agreement.

Please feel free to contact me either by telephone or email if you have questions or would like to discuss any of these issues. We look forward to representing the City of San Marcos in this matter.

Sincerely,



C. Robert Heath

CRH/bv

Enclosure(s)

**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 interest of a group of Texas cities, as representation is authorized by each city. The City of McAllen is the first such city and has agreed to receive and pay the statements for legal services rendered by the firm. Such payments will be subject to a cost sharing arrangement with other cities that have authorized the firm to represent them in this matter.

Attorneys. Bickerstaff Heath Delgado Acosta LLP is engaged by you as your attorneys, and I, C. Robert Heath, 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 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 other timekeepers 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. 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 Attachment 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 statements to you for legal services and expenses. We usually mail these periodic statements on or about the first of the month following the latest date covered in the statement. Each statement is payable within 30 days of its stated date, must be paid in U.S. Dollars, and is considered delinquent if not paid in full within 30 days of its stated date. We will include all information reasonably requested by you on all statements and will reference any purchase order number provided by you. 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.

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 generated by this Firm, 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. 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 ask us to retrieve 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. It is our Firm's policy to destroy all copies of materials in connection with the representation six (6) years after the completion of the engagement. Before destroying the materials, we will attempt to contact the client identified in this agreement; however, this document serves as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the materials without further notice. It is your responsibility to notify us of any change in address or other contact information.

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 laws provisions. Venue of any case or controversy arising under or pursuant to this Agreement will be exclusively in Travis 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.

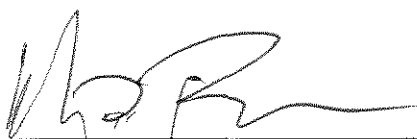
Questions. If you have any questions from time to time about any aspect of our arrangements, please feel free to raise those questions. We want to proceed in our work for you with your clear and satisfactory understanding about every aspect of our billing and payment policies; and we encourage an open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


Acceptance of Terms. If this arrangement is acceptable to you and the City of McAllen, 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 McALLEN

BICKERSTAFF HEATH DELGADO ACOSTA LLP

By: 

By: 

Date: 7/25/17

cc: Billing Department

**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:

- Research and litigate the constitutionality of SB 1004, which relates to the deployment of network nodes in the public right-of-way and sets fees that cities may impose for such use of their rights-of-way.
- Other legal services assigned or requested, only if the scope of which is confirmed by you in writing at the time of assignment

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

| TIMEKEEPER                   | BILLING RATE |
|------------------------------|--------------|
| Acosta, Alex                 | \$ 385       |
| Caputo, Cobby                | \$ 385       |
| Caroom, Doug                 | \$ 385       |
| Cheney, Denise               | \$ 360       |
| Dugat, Bill                  | \$ 360       |
| Falk, Syd                    | \$ 400       |
| Fryer, Cathy                 | \$ 360       |
| Heath, Bob                   | \$ 435       |
| Katz, Joshua                 | \$ 300       |
| Kimbrough, Chuck             | \$ 300       |
| Maxwell, Susan               | \$ 330       |
| Mendez, David                | \$ 385       |
| Mendez, Manuel               | \$ 385       |
| Rogers, Emily                | \$ 330       |
| Russell, Claudia             | \$ 330       |
| Seaquist, Gunnar             | \$ 325       |
| Than, Catherine              | \$ 330       |
| Weller, Steven               | \$ 330       |
| Young, Brad                  | \$ 330       |
|                              |              |
| Gonzalez, Vanessa            | \$ 300       |
| Lumpkin, Katy                | \$ 300       |
|                              |              |
| Fuqua, Kelli                 | \$ 250       |
| Grinnan, Kimberly            | \$ 250       |
| Miller, Gregory              | \$ 275       |
| Robinson, Lori               | \$ 250       |
|                              |              |
| Anderson, Mike               | \$ 360       |
| Delgado, Hector              | \$ 385       |
| Gangstad, John               | \$ 360       |
| Pollan, Tom                  | \$ 360       |
|                              |              |
| Legal Assistants/Specialists | \$ 175       |
| Sherry McCall                | \$ 225       |

**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.

\_\_\_\_\_, 2019

C. Robert Heath  
Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expy., Bldg. 1, Suite 300  
Austin, TX 78746

Re: SB 1004/SB 1152 litigation

Dear Mr. Heath:

The City of San Marcos has approved your firm's representation of our city, along with other Texas cities, in connection with litigation to challenge the constitutionality of SB 1004 (2017), which relates to the deployment of network nodes and that sets the fees that cities can charge for the use of their right-of-way, and to the constitutionality of SB 1152 (2019), which can preclude cities from receiving payment for the use of their rights-of-way for both cable and telecom. As part of our city's approval, I have reviewed the copy of your firm's Engagement Agreement with the City of McAllen, dated July 25, 2017, and its terms are acceptable to our city.

I understand that in order to facilitate the logistics of billing among what is anticipated to be a large number of cities, each city, including McAllen, will send Bickerstaff Heath Delgado Acosta LLP an amount equal to \$0.15 per resident of the city as shown by the 2010 federal census. Those funds along with any other funds earmarked for the prosecution of the suit will be placed in the Bickerstaff Heath Delgado Acosta LLP Trust Account and will be used to pay the law firm's fees and expenses only after those fees and expenses are incurred and billed. If the funds raised by the initial assessments are not sufficient to complete the litigation, it may be necessary for McAllen to make additional contributions and it may seek contributions from cities and other sources; however, my city will not be required to make an additional assessment to continue as a party to the litigation. At the end of the litigation any funds remaining will be returned proportionately to the participating cities, except that if the additional assessment is exhausted and additional funds are obtained above the amount of the initial assessment, any refund will go to McAllen and any other city providing funds above the amount of their initial assessment and will be computed in proportion to their contribution above the amount of their initial assessment. My city agrees to this procedure and to making its assessment.

I understand that besides group emails, you will be coordinating primarily with Kevin Pagan, and that he will be responsible for coordinating the involvement of the other cities. This is acceptable.

I have read, reviewed, and understand the attached Conflict of Interest Disclosure and Agreement. By my signature below, I represent that I am duly authorized to agree to its terms and conditions on behalf of our city, and thereby to bind our city to those terms and conditions.

Please let me know if you need additional information or we can be of assistance.

Sincerely,

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Name

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Title

---

City

## CONFLICT OF INTEREST DISCLOSURE AND AGREEMENT

Bickerstaff Heath Delgado Acosta LLP “the Firm” has been requested to represent and plans to represent some or all of the Texas cities and associations listed on Exhibit A, referred to as “the Cities,” in challenging constitutionality of SB 1004 (2017), which regulates the deployment of network nodes in the public rights-of-way and sets fees that can be charged for the use of a city’s right-of-way, and to the constitutionality of SB 1152 (2019), which can preclude cities from recovering reimbursement for the use of their rights-of-way for both cable and telecom. Because the Texas Disciplinary Rules of Professional Conduct require specific disclosures and waivers for joint representation, this waiver provides notice and consents to the waiver of these rights. The Firm will not be able to represent cities that do not execute this waiver.

We are aware of no conflicts of interest between the Cities regarding this matter at this time; however, potential conflicts of interest may arise in the future. For example, one or more of the Cities could withdraw from participation in this matter and actually oppose the remaining cities. In such an instance, without a conflict waiver, the Firm would be unable to continue representing the Cities in this matter. For this reason the Firm is requiring that current or future conflicts of interest regarding continued or future representation of the Cities, listed on Exhibit A, be waived.

This waiver means that information that otherwise would have been protected by attorney-client privilege might no longer be protected from disclosure by a City withdrawing from the representation. Similarly, an attorney owes a fiduciary duty to his clients and withdrawal or opposition between clients could create conflicting fiduciary duties. For this reason, by waiving conflicts of interest you are releasing the Firm from its fiduciary duty to the extent of the conflict.

It is further the agreement of the Firm and the Cities that representation of the Cities in this matter will not limit the Firm’s ability to represent the cities listed on Exhibit A in other or related matters in the future.

**You should carefully consider these issues and consult with independent counsel prior to signing the letter authorizing the firm to represent your city in this matter because your agreement expressly waives conflicts and potential conflicts, consents to the Firm’s representation of the Cities and waives fiduciary duty and confidentiality rights in the same matter and for future representation.**

Sincerely,

BICKERSTAFF HEATH DELGADO ACOSTA LLP

By:   
C. Robert Heath