

# UPSHUR COUNTY EMERGENCY SERVICES DISTRICT NO. 1

FEBRUARY 28, 2022

5:00 P.M.

## MINUTES


The Special meeting of the Upshur County Emergency Services District No. 1 Board of Commissioners was held on February 28, 2022, at 5:00 p.m. in the Upshur County Courtroom, Upshur County Courthouse, 100 W. Tyler Street, Gilmer, Texas.

The District will consider and act upon the following matters:

- 1) **Open meeting.** The meeting was opened at 5:00 p.m. by Marc Nichols.
- 2) **Call meeting to order, Roll Call of Board and establish quorum.** Marc Nichols called the meeting to order. Marc Nichols determined a quorum was present with Michael Kuza, Scott Mischnick, and Cloddie Henson being present. Prayer was led by Michael Kuza.
- 3) **To receive public comment.** None
- 4) **To review and take action to engage the law firm of Coveler & Peeler, PC as special counsel.** Motion was made by Michael Kuza and second by Cloddie Henson to engage the law firm of Coveler & Peeler, PC as special counsel and execute agreement attached. Motion carried 4-0. Unanimous vote in favor.
- 5) **To meet in Closed Session pursuant to Government Code §551.071 to consult with legal counsel regarding pending or contemplated litigation, settlement offers or on matters which require confidentiality under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.** The Commissioners went into Closed Session at 5:03 p.m. The meeting resumed at 5:47 p.m.
- 6) **To review and take action regarding payments by the District to Glenwood Volunteer Fire Department and/or on behalf of Glenwood Volunteer Fire Department.** Motion was made by Michael Kuza with a second by Cloddie Henson to pay the vendors directly as to the bills submitted by the Glenwood Volunteer Fire Department and to deduct said payments from their budget. Motion carried 4-0. Unanimous vote in favor.
- 7) **To consult with the Upshur County District Attorney's Office regarding potential misappropriation of District funds.** Motion by Michael Kuza with a second by Scott Mischnick for the ESD #1 Board of Commissioners to enlist the Upshur County Criminal District Attorney to investigate Glenwood Volunteer Fire Department as to misappropriation of district funds and to appoint Michael Kuza and Scott Mischnick, with

the assistance of Terri Ross, to provide to the Criminal District Attorney any documentation requested for such investigation.

- 8) **To review and take action regarding the District's contract with Glenwood Volunteer Fire Department to provide fire and rescue services within the District.** Motion was made by Michael Kuza with a second by Cloddie Henson to temporarily suspend the contract for fire and rescue services with Glenwood Volunteer Fire Department until such time as the Board of Commissioners has title to the old engine; the ESD #1 is shown as a lienholder on the new engine; and the Board of Commissioners determines the contract can be reinstated pursuant to the investigation by the Upshur County Criminal District Attorney as to misappropriation of funds by the Glenwood Volunteer Fire Department. Motion carried 4-0. Unanimous vote in favor.
- 9) **To review and take action regarding the provision of emergency services within the District, including assignment of coverage areas for contracted departments.** It was agreed that the fire departments of Gilmer, East Mountain, and Diana would assist in covering the Glenwood area until further notice. Gilmer Fire Chief Jerry Taylor, East Mountain Fire Chief Terry Carter, and ESD #2 President Gaston DeBerry, III were all in attendance and agreement to such assignment.
- 10) **Adjournment.** Motion by Michael Kuza and second by Scott Mischnick to adjourn. Motion carried 4-0. Unanimous vote in favor.

  
\_\_\_\_\_  
Presiding Officer Signature  
Title: President

Date: 3-14-2022

# COVELER & PEELER, P.C.

*Attorneys At Law*

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February 28, 2022

Board of Commissioners  
Upshur County Emergency Services District No. 1

RE: Engagement for Legal Services by Upshur County Emergency Services  
District No. 1 (the District)

Dear Commissioners:

The attorneys and staff of Coveler & Peeler, PC look forward to working with you. This letter outlines the scope of our representation of the District.

Our fees for legal services are based on the hourly rates for attorneys and staff. We will bill in quarter hour increments. When our law firm rates change, we will provide you with an update of those rates prior to any work commencing. Our current rates are attached to this letter as Exhibit "A". The terms and conditions of our representation are attached hereto as Exhibit "B", and are hereby incorporated by reference.

We do not bill for routine travel time or mileage to and from regularly scheduled District meetings **within our normal client base region (Harris and surrounding counties)**. We do bill for expenses, such as copies, delivery charges, postage and other expenses incurred in the course of our representation. We bill for these items at cost unless specifically approved before expenses are incurred. Some items performed by outside vendors may be paid by Coveler & Peeler and billed back to the District or they may be billed directly to the District on a case by case basis.

We will bill periodically for hourly legal fees and costs incurred on a monthly basis without retainer. Our billing statements contain adequate detail to reasonably explain the work performed for the District and the time spent to produce such work. However, you are always free to request additional information for any billing item.

We anticipate our engagement as the District's special counsel to include the following matters:

1. Assist the District with review of issues between the District and one or more of its contracted fire suppression providers, including possible action to recover funds paid by the District.

The attorney in charge of the District's file and representation will be firm principal John W. Peeler. Other firm attorneys and staff will assist on District matters as we deem appropriate. When completing work on behalf of the District, irrespective of how the matter is assigned to us by the Board as a whole, by committees or individual commissioners, or by District staff, our client is the District Board as a whole, not the individual members or District employees. While it may at times be appropriate to provide representation, assistance and confidential communications and information to individual commissioners and District senior staff, our ability to communicate with the Board as a whole must not be constrained or unreasonably limited. Only through clear, complete communications directly with the Board can we ensure that we are adequately meeting our obligations as District legal counsel.

You may discharge us from this representation at any time, with or without cause. We are free to withdraw at any time, with or without cause, subject to reasonable notice under the circumstances and with approval of any court which may be involved in any matters under our representation. We will be entitled to receive compensation from you for all services rendered and all disbursements made under the provisions of this engagement up to the time of withdrawal. Circumstances may arise that will require us to withdraw or recuse our firm from representation under the Texas Disciplinary Rules of Professional Conduct or other applicable professional standards. In such circumstances, as well as in the instances of discharge or withdrawal described above, we will cooperate in the transfer of your files to other counsel of your choosing.

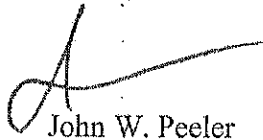
When an attorney is engaged by a client for general representation or representation to complete a specific matter, the attorney cannot guarantee the results of such representation. We make no such representations now, nor do we make any express warranties regarding our representation, and we disclaim any implied warranties concerning it.

We appreciate the Board giving us the opportunity to submit our proposal for legal services.

Very truly yours,

**COVELER & PEELER, P.C.**

By:

  
John W. Peeler

Accepted:

Upshur County Emergency Services District No. 1

By:



Title:

President

**COVELER & PEELER, P.C.**  
2022 Rate Schedule

Please be advised that commencing with work performed January 1, 2022 the billing rates for the law firm of Coveler & Peeler, P.C., shall be as follows:

Ira A. Coveler	\$ 395 per hour
John W. Peeler	\$ 395 per hour
David J. Manley	\$ 360 per hour
Nicole E. Pierce	\$ 360 per hour
Krystine N. Ramon	\$ 360 per hour
Paralegal(s)	\$ 175 - 225 per hour
Legal Assistants	\$ 150 per hour
Administrative Assistants	\$ 95 per hour

We appreciate the opportunity to continue working with your Board. We look forward to a productive relationship with the District and truly appreciate the opportunity to serve the District's needs.

Thank you very much.

Sincerely,

**COVELER & PEELER, P.C.**

## COVELER & PEELER, P.C.

### TERMS OF ENGAGEMENT

#### Introduction

These are the Terms of Engagement adopted by Coveler & Peeler, P.C., ("C&P") 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

Since C&P has been engaged to represent the client only, the engagement does not include the client's affiliated or related entities, or their respective individual commissioners or employees. Similarly, C&P does not represent the fire department(s) contracted with the District. 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.

#### The Scope of the Representation

C&P undertakes to provide representation and advice on the matters for which we are engaged, and it is important that we both have a clear understanding of the services that C&P has agreed to provide. In the Engagement Letter, C&P specifies the matter in which we will provide representation and the scope of the services we will provide. If there are any questions about the engagement, including the scope of the representation, and related services being performed, please address those questions promptly with your principal contact at the firm.

#### Our Relationship With Others

C&P represents Emergency Services Districts throughout Texas. In some instances, the applicable rules of professional responsibility may limit our ability to represent clients with conflicting or potentially conflicting interests. Those rules of professional responsibility often allow us to exercise our independent judgment in determining whether our relationship with one client prevents us from representing another. In other situations, we may be permitted to represent a client only if the other clients consent to that representation.

If a conflicts issue unrelated to the engagement develops between you and another client, we will follow the applicable rules of professional responsibility to determine whether we may represent either you or the other client in the unrelated controversy. In making this determination, we will consider your agreement to the Conflicts of Interest provisions in these Terms of Engagement.

### Staffing The Project

In most cases, one attorney will be your primary contact. In order to provide you with the expertise of our firm, and to provide services on a cost effective basis, that attorney will delegate parts of your work to other lawyers, legal assistants and other professionals.

### Fees, Billing Arrangements and Terms of Payment

C&P issues invoices on a regular basis, normally each month, for fees and other charges. Invoices are due on presentment and are considered past due thirty (30) days after receipt. It is important to review invoices that are presented each month and to bring any concerns regarding the invoice, services or staffing to the attention of your primary contact at the firm within thirty (30) days of receipt of an invoice.

Fees for professional services and reimbursable expenses are not contingent on the outcome of the project.

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.

As an adjunct to providing services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. Whenever we incur such charges on your behalf or charge for such ancillary support services, we will bill them to you as part of your monthly invoice. Examples include charges for photocopying, postage, long-distance telephone calls, travel and conference expenses, delivery charges, computerized research, and facsimile and other electronic transmissions. Outside expenses generally will be billed at cost, while some in-house expenses (e.g., copying, telecopying, computer services and in-house research) will include a reasonable allocation of overhead. In appropriate cases, reimbursable expenses will also include overtime charges for dedicated services for secretaries and other staff.

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 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. Because we often have ongoing professional relationships with the persons who render such services, we also ask that you pay such bills promptly.

At times, and for a limited time, we may retain copies of documents generated or received by us in the course of your representation. Should you request documents from us at the conclusion of our representation (other than your original documents), to the extent that such documents may be available, you agree to compensate the firm for reproduction charges and professional fees required to retrieve, review and duplicate the files.

### Your Cooperation

To enable us to provide effective representation, you agree to: (1) disclose to us, fully and 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; and, (4) cooperate fully with us in all matters relating to the engagement.

### Termination and Recusal

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; (b) the termination can be accomplished without material adverse effect on your interests; (c) the firm has a fundamental disagreement with the objective in this engagement; (d) you 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 (e) 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.

Circumstances may arise that will require us to withdraw or recuse our firm from representation under the Texas Disciplinary Rules of Professional Conduct or other applicable professional standards. In such circumstances, as well as in the instances of discharge or withdrawal described above, we will cooperate in the transfer of your files to other counsel of your choosing.

We will be entitled to receive compensation from you for all services rendered and all disbursements made under the provisions of this engagement up to the time of withdrawal or termination.

### Confidentiality and Document Retention

At the close of any matter, we may return relevant documents to Client, send remaining pertinent parts of our files to a private storage facility for a limited time or destroy certain documents. The attorney closing the file will determine, at his or her discretion, which portion should be returned to Client, which portion should be sent to private storage (and for how long) and which portions are to be destroyed.

You agree that we will own and retain our own files pertaining to the engagement and that you will not have the right or ability to require us to deliver such files (or copies thereof) to you, including, for example, firm administrative records, 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, internal memoranda and legal and factual research, including investigative reports prepared by or for the internal use of lawyers. Further, at the discretion of the responsible partner for the project in question, we may destroy any such documentation which



is the property of the firm or any documentation which such partner determines to be duplicative or unnecessary, and in all cases without having to obtain your consent.

#### 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 C&P 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.

As required by Texas Government Code chapter 2271, Coveler & Peeler, P.C. verifies that it does not boycott Israel and will not boycott Israel during the term of our engagement with the District.

As required by Texas Government Code chapter 2274, Coveler & Peeler, P.C. verifies that it does not boycott energy companies and will not boycott energy companies during the term of our engagement with the District.

As required by Texas Government Code chapter 2274, Coveler & Peeler, P.C. verifies that it does not and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

#### Our Professional Responsibility

The code of professional responsibility lists several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example, misrepresentation or failure to disclose material facts, action contrary to our advice, conflict of interest with another client and nonpayment of fees or charges. C&P tries to identify in advance and discuss with our clients any situation that may lead to our withdrawal. If withdrawal ever becomes necessary, C&P gives our client written notice as soon as practicable.

The State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled Attorney Complaint Information is available at all of our offices and is likewise available upon request. A client that has any questions about the State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1-800-932-1900 (toll free).

### 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 C&P and Client.

### In Conclusion

We look forward to a long and mutually satisfying relationship with you. Again, if at any time you have a question or concern, please feel free to bring it to the attention of your principal contact at our firm.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1** Name of business entity filing form, and the city, state and country of the business entity's place of business.  
Coveler & Peeler, PC  
HOUSTON, TX United States

Certificate Number:  
2022-855165

**2** Name of governmental entity or state agency that is a party to the contract for which the form is being filed.  
Upshur County Emergency Services District No. 1

Date Filed:  
02/28/2022

Date Acknowledged:

**3** Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.  
2022-02-28 LEGAL  
Legal services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Coveler, Fred	Houston, TX United States	X	
	Coveler, Ira	Houston, TX United States	X	
	Peeler, John	Houston, TX United States	X	

**5** Check only if there is NO Interested Party.

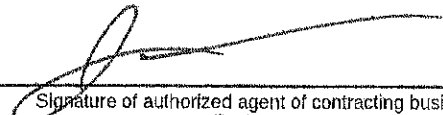
**6 UNSWORN DECLARATION**

My name is John Peeler and my date of birth is 4/12/71

My address is 820 Cassman Smith (710), Houston, TX, 77024, USA  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in HARRIS County, State of TEXAS, on the 08 day of FEB, 2022.  
(month) (year)

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)