



PROCUREMENT FOR LEGAL SERVICES

November 15, 2022

STATEMENT DESCRIBING CIRCUMSTANCES NECESSITATING AN EMERGENCY PROCUREMENT FOR LEGAL SERVICES

Procurement Date: November 15, 2022

Procurement Unit: Office of Legislative Research and General Counsel (OLRGC)

Procurement Official: John Fellows, General Counsel, Utah Legislature

On October 24, 2022, Utah’s Third Judicial District Court partially denied OLRGC’s motion to dismiss the lawsuit filed against the Utah Legislature, the Utah Legislative Redistricting Committee, and certain legislators challenging the constitutionality of the Utah Legislature’s legislative congressional redistricting map (Redistricting Lawsuit). If OLRGC’s motion to dismiss had been granted, the Redistricting Lawsuit would have concluded without proceeding to trial. Following the denial of the motion, it became necessary for OLRGC to immediately retain outside counsel to assist in responding to the claims in the Redistricting Lawsuit within the fast-approaching court deadlines to protect the legal interests of the Utah Legislature.

OLRGC entered into a contract following an emergency procurement with Consovoy McCarthy, PLLC, to serve as outside counsel in the Redistricting Lawsuit. The written contract related to the emergency procurement is attached.

AGREEMENT FOR LEGAL SERVICES

OLRGC and CONSOVOY enter into this Agreement for Legal Services and agree as follows:

I. DEFINITIONS

As used in this AGREEMENT:

1. "AGREEMENT" means this Agreement for Legal Services.
2. "CONSOVOY" means the law firm of Consovoy McCarthy, PLLC, with its principal place of business at 1600 Wilson Blvd., Arlington, Virginia and its Salt Lake City office at 222 South Main Street, 5th Floor, Salt Lake City, Utah.
3. "GENERAL COUNSEL" means the individual designated or appointed by the Utah Legislature to serve as general counsel for the Utah Legislature.
4. "LEGAL CONTACT" means the attorney within OLRGC to whom the GENERAL COUNSEL delegates authority to act on behalf of and in place of the GENERAL COUNSEL, as provided in this AGREEMENT.
5. "LEGAL SERVICES" means legal services to assist OLRGC in its efforts to represent, defend, and advance the legal interests of all legislative defendants in the REDISTRICTING LAWSUIT, as directed by the GENERAL COUNSEL.
6. "OLRGC" means the Office of Legislative Research and General Counsel, a staff office of the Utah Legislature.
7. "OUTSIDE COUNSEL GUIDELINES" means the Outside Counsel Guidelines attached hereto as Attachment "A".
8. "REDISTRICTING LAWSUIT" means the pending lawsuit that challenges the legislative congressional redistricting map and that was filed in Utah's Third Judicial District Court by the League of Women Voters of Utah, Mormon Women for Ethical Government, Stefanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, Jack Markman, and Dale Cox against the Utah Legislature, Utah Legislative Redistricting Committee, and Senator Scott Sandall, Representative Brad Wilson, Senator J. Stuart Adams, and Lieutenant Governor Deidre Henderson (Case No. 220901712), and includes any proceedings before an appellate court arising from decisions of the Third Judicial District Court in that lawsuit.

II. RECITALS

1. Under Article IV, Section 32 of the Utah Constitution, the GENERAL COUNSEL provides and controls all legal services for the Utah Legislature.
2. In accordance with Utah Code Title 63G, Chapter 6a, Utah Procurement Code, and Legislative Management Committee Policy H – Procurement Policy, OLRGC contacted nine law firms about providing legal representation in the REDISTRICTING LAWSUIT, received proposals from and conducted interviews with five law firms, and, with the consent and at the direction of the GENERAL COUNSEL, selected CONSOVOY to provide LEGAL SERVICES based on

CONSOVOY's qualifications and the conclusion that CONSOVOY provides the best value to OLRGC and the Utah Legislature.

3. By entering into this AGREEMENT, OLRGC and CONSOVOY intend to memorialize the terms that will govern CONSOVOY'S provision of LEGAL SERVICES.

III. SERVICES AND PAYMENT

1. **Services.** CONSOVOY agrees to provide all LEGAL SERVICES that are reasonably necessary to assist OLRGC in the REDISTRICTING LAWSUIT under the general direction and supervision of the GENERAL COUNSEL. CONSOVOY agrees that decisions regarding the scope, extent, and breadth of the representation will remain with the GENERAL COUNSEL. CONSOVOY agrees to manage the work necessary to provide the LEGAL SERVICES under this AGREEMENT in a cost-effective manner and in the best interests of OLRGC and the Utah Legislature.
2. **Legal Contact.** Subject to Paragraph III. 1, GENERAL COUNSEL has delegated to the LEGAL CONTACT all authority to act on behalf of and in the place of the GENERAL COUNSEL with respect to the implementation of this AGREEMENT and the supervision and oversight of CONSOVOY in providing LEGAL SERVICES under this AGREEMENT, consistent with the OUTSIDE COUNSEL GUIDELINES and except as GENERAL COUNSEL otherwise communicates in writing to CONSOVOY.
3. **Interim Reports.** CONSOVOY agrees to submit interim reports to the LEGAL CONTACT and to meet with the LEGAL CONTACT upon request regarding the nature, progress, and extent of the LEGAL SERVICES provided and regarding CONSOVOY's forecasts about any remaining work.
4. **Fees and Expenses.** OLRGC agrees to pay CONSOVOY for fees and expenses in accordance with the OUTSIDE COUNSEL GUIDELINES. OLRGC agrees to pay for the LEGAL SERVICES provided under this AGREEMENT for the following individuals at the following hourly rates:

Name	Title	Hourly Rate
Tyler Green	Partner	\$700
Taylor Meehan	Partner	\$700
Jeff Harris	Partner	\$700
Frank Chang	Senior Associate	\$650
Jeff Hetzel	Senior Associate	\$650
Jim McGlone	Senior Associate	\$650
David Rosenthal	Senior Associate	\$650
C'Zar Bernstein	Associate	\$595
Thomas Vaseilou	Associate	\$595
Conor Woodfin	Associate	\$595
Alexander Phelps	Sr. Research Associate	\$95
Harrison Chen	Research Associate	\$75

Hourly rates for the above individuals may not be changed without prior written approval from the LEGAL CONTACT. Prohibited fees and expenses described in the OUTSIDE COUNSEL GUIDELINES will not be paid.

5. **Invoices and Billing.** Unless otherwise directed by the LEGAL CONTACT, CONSOVOY shall submit monthly invoices for CONSOVOY's fees and expenses under this AGREEMENT to the LEGAL CONTACT via email. The monthly invoices shall include the total number of hours each individual described in Paragraph III.4 spent performing LEGAL SERVICES, the date of the LEGAL SERVICES, and a description of the LEGAL SERVICES performed on each date. OLRGC shall provide payment to CONSOVOY within 30 days after receipt of a correct invoice from CONSOVOY.
6. **Outside Services.** Subject to the approval of the LEGAL CONTACT, CONSOVOY may retain local counsel, consultants, expert witnesses, jury consultants, or vendors in accordance with the OUTSIDE COUNSEL GUIDELINES. CONSOVOY shall submit any expenses for outside services as part of the invoices described in Paragraph III.5.
7. **Appropriation of Funds.** Notwithstanding any other provision of this AGREEMENT, CONSOVOY acknowledges that OLRGC cannot contract for the payment of funds not yet appropriated by the Utah Legislature. OLRGC may, without penalty or liability of any kind, terminate this AGREEMENT due to the non-appropriation of funds in accordance with Paragraph IV.1.

IV. OTHER TERMS

1. **Termination.** This AGREEMENT continues until terminated. OLRGC may, upon written notice to CONSOVOY, terminate this AGREEMENT at any time for any or no reason. In the event of the termination of this AGREEMENT, CONSOVOY will be compensated only for fees and expenses earned and incurred up to and including the date of termination and OLRGC will not be liable for any future commitments, penalties, or damages of any kind.
2. **Survival.** All rights and obligations under this AGREEMENT cease upon termination of this AGREEMENT, except for the rights and obligations that expressly survive termination of this AGREEMENT, including this Paragraph and Paragraphs IV. 4, 5, 6, 7, 8, 9, 12, and 19.
3. **Incorporation.** The provisions of the OUTSIDE COUNSEL GUIDELINES are hereby incorporated into this AGREEMENT by reference. If any conflict exists between the OUTSIDE COUNSEL GUIDELINES and this AGREEMENT, the terms and conditions of this AGREEMENT prevail.
4. **Public Information.** This AGREEMENT and documents relating to this AGREEMENT are subject to public release in accordance with Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act. CONSOVOY acknowledges that information created or exchanged in the course of representation of the Utah Legislature may be subject to Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act. CONSOVOY agrees to exercise professional judgment and care when creating documents or other materials intended to be confidential or privileged that may be subject to disclosure under Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act.

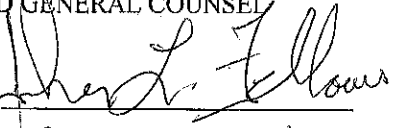
5. **Confidentiality and Non-Disclosure.** In accordance with the OUTSIDE COUNSEL GUIDELINES, CONSOVOY shall maintain strict confidentiality with respect to all information or material that CONSOVOY acquires during the term of this AGREEMENT about the Utah Legislature and take appropriate measures to ensure all personnel and outside service providers are familiar with this confidentiality requirement and effectively supervised. Except as otherwise provided in this AGREEMENT, CONSOVOY may not disclose or release any such information or materials to anyone during the course of or after termination of this AGREEMENT without prior written consent from the LEGAL CONTACT. This paragraph does not prohibit CONSOVOY from disclosing or releasing information or materials that:
 - a. are freely available to the public at the time CONSOVOY is in possession of the information or materials;
 - b. were in CONSOVOY's possession free of any obligation of confidence at the time CONSOVOY acquired the information or materials; or
 - c. are required to be disclosed in response to a valid court order or as otherwise required by law.
6. **Notice of Disclosure.** In the event CONSOVOY receives a request or is required by deposition, interrogatory, request for documents, subpoena, or other similar process to disclose all or any part of the confidential information or materials described in Paragraph IV.5, CONSOVOY agrees, if legally permissible, to immediately notify the LEGAL CONTACT of the request or requirement.
7. **Conflict of Interest.** CONSOVOY certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the Utah Legislature to secure favorable treatment with respect to being awarded this AGREEMENT. CONSOVOY further certifies that its performance of LEGAL SERVICES under this AGREEMENT creates no potential or actual conflict of interest for CONSOVOY. If, during the term of this AGREEMENT, CONSOVOY becomes aware of any potential conflict of interest performance of LEGAL SERVICES under this AGREEMENT creates, CONSOVOY shall immediately notify the LEGAL CONTACT of the conflict. The LEGAL CONTACT will consider conflict waivers in accordance with the OUTSIDE COUNSEL GUIDELINES.
8. **Independent Contractor.** CONSOVOY is an independent contractor and is not authorized, expressly or by implication, to bind the Utah Legislature, OLRGC, the State of Utah, or any member, office, officer, department, agent, official, or employee of the Utah Legislature or the State of Utah to any agreement, settlement, liability, or understanding or to perform any act as agent for the Utah Legislature, OLRGC, the State of Utah, or any member, office, officer, department, agent, official, or employee of the Utah Legislature, or the State of Utah. Except as expressly provided in this AGREEMENT, CONSOVOY is solely responsible to pay for all of CONSOVOY's expenses and to pay each employee or subcontractor of CONSOVOY all salary, wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or subcontractor of CONSOVOY.
9. **Records Administration.** CONSOVOY shall maintain all records necessary to properly account for the payments made to CONSOVOY for fees and expenses authorized by this AGREEMENT for at least four years after the day on which the AGREEMENT terminates. CONSOVOY agrees to allow state and federal auditors and staff of OLRGC access to all the records relating to this AGREEMENT, for audit, for inspection, and for the monitoring of LEGAL SERVICES.

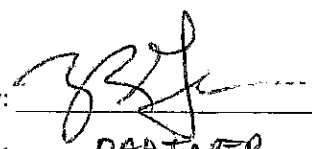
10. **Assignment Prohibited.** CONSOVOY may not assign this AGREEMENT or any duty or benefit relating to this AGREEMENT without prior written authorization by the GENERAL COUNSEL.
11. **Debarment.** CONSOVOY certifies that neither CONSOVOY nor CONSOVOY's principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this AGREEMENT by any governmental entity. CONSOVOY will notify the LEGAL CONTACT within 30 days if debarred by any governmental entity during the term of this AGREEMENT.
12. **Indemnity.** CONSOVOY releases and agrees to defend, indemnify, and hold harmless the Utah Legislature, OLRGC, and the State of Utah from and against any damage, cost, or liability, including reasonable attorney fees and court costs, for any and all injuries to persons or property, or claims for money damages, arising from acts or omissions of CONSOVOY or CONSOVOY's employees, contractors, and volunteers.
13. **Authority.** CONSOVOY represents that the individual who signs this AGREEMENT has the authority to bind CONSOVOY, and does, by signing this AGREEMENT, bind CONSOVOY to the terms and conditions of this AGREEMENT.
14. **Electronic Signature.** The exchange of copies of this AGREEMENT and of signature pages by facsimile transmission or other electronic means constitutes effective execution and delivery of this AGREEMENT.
15. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter contained in this AGREEMENT. There are no covenants, terms, or conditions, express or implied, written or unwritten, that govern the subject matter of this AGREEMENT, except as expressly described in this AGREEMENT. This AGREEMENT supersedes all prior agreements between the parties relating to all or part of the subject matter contained in this AGREEMENT.
16. **Modification.** This AGREEMENT may be modified only by mutual written agreement by the parties.
17. **Force Majeure.** Neither party to this AGREEMENT will be held responsible for a delay or default caused by fire, riot, act of God, or war that is beyond that party's reasonable control.
18. **Severability.** If any provision of this AGREEMENT is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction, the remaining provisions of this AGREEMENT are not affected and shall remain in full force and effect, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had not been contained in this AGREEMENT.
19. **Choice of Law, Jurisdiction, and Venue.** This AGREEMENT is governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this AGREEMENT. Venue will be in Salt Lake City, Utah, in the Third Judicial District Court for Salt Lake County.

20. **Waiver.** A party's waiver of any provision, term, covenant, or condition of this AGREEMENT is not a waiver of any other provision, term, covenant, or condition of this AGREEMENT, nor any subsequent breach of the same.

OFFICE OF LEGISLATIVE RESEARCH
AND GENERAL COUNSEL

CONSOVOY MCCARTHY, PLLC

By: 
Title: General Counsel, Utah Legislature
Date: 11-15-22

By: 
Title: PARTNER
Date: 11/11/22

ATTACHMENT A



Outside Counsel Guidelines

Updated November 7, 2022

Pursuant to Article VI, Section 32 of the Utah Constitution, the legislative general counsel (“General Counsel”) provides and controls all legal services for the Utah Legislature. When appropriate, the General Counsel will retain outside counsel to represent the Legislature or any subset, member, or employee of the Legislature (collectively “Legislature”). The General Counsel is solely responsible for the selection and supervision of outside counsel.

The objective of these Outside Counsel Guidelines is to ensure the highest quality legal representation and services for the Legislature while maintaining effective supervision and cost controls.

Communication

For each matter, the General Counsel will assign an attorney to supervise the representation and act as in-house liaison (“Legal Contact”) with outside counsel. Unless advised otherwise, all communication between outside counsel and the General Counsel should be made through the Legal Contact. Outside counsel must consult with the Legal Contact on all aspects of the representation and keep the Legal Contact fully informed of the status and proposed course of the matter. The General Counsel expects no surprises with respect to strategies, tactics, outcomes, or the cost and expense of legal work.

Outside counsel must consult the Legal Contact before initiating direct communication with any member or employee of the Utah Legislature regarding the matter for which outside counsel was retained. Outside counsel must copy the Legal Contact on any written communication, including text messages, with members or employees of the Utah Legislature regarding the matter.

Collaboration

Outside counsel must provide the General Counsel sufficient time to review drafts of and provide feedback on all significant documents, including substantive pleadings, briefs, correspondences, and any other documents that will be provided to third parties on the Legislature’s behalf. The Legal Contact may choose to prepare drafts of pleadings or other documents.

The Legal Contact may work with outside counsel to tailor the Legal Contact’s oversight and communication expectations as appropriate in the context of a particular matter.

Conflicts of Interest

Before and throughout an engagement, outside counsel must be vigilant in identifying and avoiding any conflicts of interest or the appearance of such conflicts. Outside counsel must be sensitive to both direct conflicts and to less direct conflicts that may arise from the firm’s advocacy, on behalf of other clients, of positions that potentially

conflict with important interests of the Legislature. The General Counsel never provides prospective waivers of actual or potential conflicts of interest. The General Counsel will consider written requests for conflict waivers on a case-by-case basis.

Staffing

In general, matters should be staffed with the minimum number of attorneys consistent with high quality legal services. Staffing of meetings, depositions, mediations, court appearances, negotiation sessions, and settlement conferences should be as efficient as possible, generally limited to one attorney. Outside counsel must consult with the Legal Contact before allowing more than one attorney to attend a meeting, deposition, mediation, court appearance, negotiation session, or settlement conference.

Retaining Outside Services

Outside counsel may not retain local counsel, consultants, expert witnesses, jury consultants, or vendors (collectively "Outside Vendors") without advance approval from the Legal Contact. Unless the Legal Contact and outside counsel agree otherwise, outside counsel is responsible, in consultation with the Legal Contact, for budgeting and billing arrangements governing the work to be performed by any Outside Vendors.

Fees, Expenses, and Billing

- 1. Rates.** In matters that are billed based on hourly rates, outside counsel shall provide the General Counsel a schedule showing the billing rate for each timekeeper assigned to the matter. Once the General Counsel approves the schedule, outside counsel may not change the stated billing rates or timekeepers without prior approval from the General Counsel.
- 2. Prohibited Fees.** The General Counsel will not pay for the following:
 - Timekeepers that are not:
 - Approved before they begin work.
 - Direct employees of the firm. Work by non-employees may be billed as an expense.
 - Unapproved rate increases. The General Counsel's expectation is that rates will not change for the duration of an engagement.
 - Time spent due to staffing inefficiencies caused by turnover or absence.

- An hourly billing rate for commuting time or any other travel time.
 - Clerical, secretarial, or administrative work, regardless of who performs it, including case administration, file management, scheduling, budget preparation, conflicts clearance procedures, and data organization.
 - Block billing entries or vague line-item descriptions like “attend meeting,” “participate in client call,” “trial preparation,” “research,” “review file,” “draft pleadings,” etc. E.g. required level of description: “Telephone call with J. Smith and J. Doe re: oral argument preparation.”.
- 3. Invoices.** Invoices for work completed during a calendar month are due by the end of the following calendar month.
- 4. Expenses.** The General Counsel will reimburse outside counsel for the actual cost of all necessary and reasonable out-of-pocket expenses.
- 5. Prohibited Expenses.** The General Counsel will not pay for the following expenses:
- Overhead expenses, including staff overtime, expenses derived from overtime, local transportation, conference rooms, rental fees, air conditioning, and heating.
 - Routine postage expenses. Any necessary postage charges (certified mail, overnight service, or oversized packages) must include an explanation and to/from addresses.
 - Library related expenses, including LexisNexis, Westlaw, AI-assisted legal practice tools, or other database legal research expenses.
 - Communication expenses, including phone (local, long distance, cellular), video, fax, and videoconferencing.
 - Billing software charges.
 - Printing documents from a computer.
 - Meals unrelated to overnight travel.
 - Messengers employed by the law firm.
 - Interest charges incurred on invoices not paid promptly by outside counsel.
- 6. Travel.** Outside counsel must avoid unnecessary travel. The General Counsel will reimburse travel expenses in accordance with the state employee

reimbursement policies found in Utah Admin. Code R25-7 Travel-related Reimbursements for State Employees.

Confidentiality

All information outside counsel learns about the Legislature while representing the Legislature must be treated and maintained as strictly confidential. Outside counsel must take appropriate measures to ensure that all legal and non-legal personnel, including outside consultants, vendors, and experts, are familiar with these requirements and effectively supervised.

In the event any confidential information is compromised or potentially compromised, outside counsel must notify the General Counsel immediately.

Compliance

If outside counsel fails to comply with these guidelines, the General Counsel may withhold or refuse to pay all or portions of noncompliant bills. Any modification to these guidelines must be confirmed in writing by the General Counsel.