

STANDARD AGREEMENT FORM

1. Agency Contract Number 20-207-1111	2. Billing Contact Michael Connolly, Partner mike@consovoymccarthy.com	3a. Appropriation 033040700	3b. Unit 2060	3c. Program
4. EN Doc Type and # GAE 20*	Project Matters related to Janus decision	Matter ID: 2019200724	6. AK Biz License # n/a	Vendor Number VC030136
This contract is between the State of Alaska,				
7. Department of Law	Division Labor and State Affairs	hereafter the State, and		
8. Contractor Consovoy McCarthy, PLLC Email <u>will@consovoymccarthy.com</u> 703-243-9423 hereafter the Contractor				
Mailing Address 1600 Wilson Boulevard, Suite 700 Arlington, VA 22209				
9. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it. ARTICLE 2. Performance of Service: 2.1 Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract. 2.2 Appendix B sets forth the liability and insurance provisions of this contract. 2.3 Appendix C sets forth the services to be performed by the contractor. ARTICLE 3. Period of Performance: The period of performance for this contract begins <u>December 19, 2019</u> and ends <u>with the resolution of the matter.</u> ARTICLE 4. Considerations: 4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$600,000 in accordance with the provisions of Appendix D. 4.2 When billing the State, the contractor shall refer to Contract #20-207-1111 and shall mail the invoice to the address below with a courtesy copy in PDF format emailed to <u>03ContractPayments@alaska.gov</u>				
10. Department of Law				
Mailing Address 1031 W. 4 th Avenue, Suite 200 Anchorage, AK 99501		Attention: Ed Sniffen <u>ed.sniffen@alaska.gov</u>		
11. CONTRACTOR				
Name of Firm Consovoy McCarthy, PLLC		13. CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the variety, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.		
Signature of Authorized Representative <i>Michael Connolly</i>	Date 12/29/2019			
Typed or Printed Name of Authorized Representative Michael Connolly				
Title Partner EIN: on record				
12. CONTRACTING AGENCY				
Department/Division Law/Civil-Labor and State Affairs	Date 1-8-2020	Signature of Head of Contracting Agency or <i>Kevin G. Clarkson</i>		Date 1-8-2020
Signature of Project Director <i>Clyde E. Sniffen</i>		Typed or Printed Name Kevin G. Clarkson		
Typed or Printed Name of Project Director Clyde E. Sniffen		Attorney General		
Title Chief of Staff		Authorized by AS 36.30.130 RFP 2020-0300-4430		

NOTICE: This contract has no affect until signed by the head of contracting agency or designee.

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 If the contractor has a claim in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620-632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problems of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting inspection of the contractor's facilities, and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of the contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by an Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection.

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract, AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees, among other things, that provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure.

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

APPENDIX B²
INDEMNITY AND INSURANCE

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$300,000 per Claim / Annual Aggregate
\$100,000-\$499,999	\$500,000 per Claim / Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Claim / Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

APPENDIX C

Article 1. Services to be performed by the Contractor

Article 1.1. At the specific direction of the Attorney General's Office, the Contractor, Consovoy McCarthy, PLLC, shall represent the State in its litigation efforts to defend the Attorney General's opinion concerning interpretation of the *Janus V AFSCME* decision and the Governor's administrative order implementing the decision.

It is agreed between the parties that the State shall determine the scope of the services to be rendered by the Contractor. It is further agreed that the State may require a separate contract on any matter which, in its judgment, may be sufficiently complicated or prolonged to justify a separate contract.

Article 2. Contract Management

Article 2.1 The designated contact person for the Contractor is William S. Consovoy. The Contractor's services under this agreement shall be directed and managed from the contractor's Arlington, Virginia office. The Contractor may assign other consulting professionals to provide services under the contract after providing notice to, and obtaining approval from, the Project Director. All such individuals assigned to provide services under this Contract shall work under the direction and management of the individual listed above.

Article 2.2 The Contractor will maintain the involvement of those individuals identified in Article 2.1 above. In the event of an unforeseeable circumstance that requires substitution for any of those individuals, the Contractor shall notify the State in writing of the proposed substitution. The State reserves the right to accept or reject a proposed substitute. In addition, before substitution of any individual is effected, the State must approve the extent to which transitional time will be billed.

Article 2.3 At the discretion of the Project Director, the Contractor may be required to prepare an estimate of the time and costs necessary to complete any matter assigned under this contract.

Article 2.4 The contractor agrees to closely monitor costs incurred and fees to be charged for services provided under this agreement and to alert the Project Director before such costs and fees exceed the authorized contract amount. In the event the Contractor fails to notify the Project Director prior to incurring a cost overrun, the contractor shall assume liability for any excess costs and fees incurred up until the time at which the contractor notifies the project director of the overrun.

Article 2.5 The period of performance, scope, and amount of this agreement may be amended in writing at the discretion of the State. In addition, the parties to this agreement acknowledge that work may begin on the date shown in Article 3. ("Period of Performance") and that the foregoing date may precede the date of execution of this agreement because immediate performance is required to serve the best interest of the state.

Article 2.6 The Attorney General's Office shall be the primary point of contact for all substantive dealings with the media. In the event the Contractor is contacted by media representatives concerning this or other cases being handled on behalf of the state, the Contractor should decline any comment beyond confirming factual matters that are already a matter of public record and refer the individuals to the Project Director.

Article 2.7 **FOREIGN CONTRACTING:** By signature on this Contract, the Contractor certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. Failure to comply with this requirement will cause the state to reject the bid or proposal as non-responsive, or cancel the contract.

Article 2.8 **HUMAN TRAFFICKING:** By signature on this contract, the contractor certifies that:

- 1) the contractor is not established and headquartered or incorporated and headquartered, in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report; or 2) if the contractor is established and headquartered or incorporated and headquartered, in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report, a certified copy of the contractor's policy against human trafficking must be submitted to the State of Alaska prior to contract award.

APPENDIX D

Article 1. Consideration

Article 1.1 In full consideration of the Contractor's performance under this agreement, the State shall pay the Contractor the following hourly rates for the professional services of individuals below:

<u>Name/Title</u>	<u>Standard Rate</u>	<u>Alaska Discounted Rate</u>
William Consovoy, Partner	\$950 per hour	\$600 per hour
Michael Connolly, Partner	\$950 per hour	\$600 per hour
Steven Begakis, Associate	\$600 per hour	\$450 per hour

In addition, the State will reimburse the Contractor for the services of other consulting professionals or temporary personnel that may be employed to provide services under this agreement so long as the use of such additional personnel and their rates are approved in advance by the State's project director.

Article 1.2 The State agrees to reimburse the Contractor on a monthly or other periodic basis for reasonable and necessary out-of-pocket expenses incurred under this contract. No reimbursement shall be made for any administrative, surcharge, or other overhead recovery fee. **Unless otherwise noted,** reimbursement for out-of-pocket expenses shall be limited to actual costs except that reimbursement for those specific services or expenses listed below shall be limited as follows:

<u>Service or Expense</u>	<u>Charge/Rate</u>
Reproduction	\$0.10 per page
Computerized Database Research	At cost as invoiced
Courier Services	
Automobile Messenger Deliveries	At cost as invoiced
Overnight Deliveries (such as UPS,	
Federal Express, Express Mail, DHL)	At cost as invoiced
Postage	At cost
Telephone	At cost as invoiced
Telecopier	\$0.75(local), \$1.50(domestic), \$2.25(international)
Travel and Lodging	
Hotel Accommodations	Not to exceed \$300.00/night
Air Fare	Not to exceed coach class
Cab Fare	At cost as invoiced
Meals & Incidental Expenses	Flat rate payment of \$60.00/day for each full day (midnight to midnight) of travel.

Reimbursement for any of the above shall be limited to actual costs. No reimbursement shall be made for any administrative, surcharge, or other overhead recovery fee. Reimbursement shall not be made for the purchase or lease of office space, furnishings, equipment, or software unless approved in advance by the Deputy Attorney General. Upon conclusion of this agreement, unless the Deputy Attorney General approves other arrangements, the ownership of any furnishings, equipment, or software purchased under this contract shall revert back to the State and those items returned to the Department of Law.

Reimbursement for secretarial overtime or other temporary administrative or clerical assistance may be authorized but only if required by the nature or timing of assignments made under this contract (e.g. large projects or court imposed deadlines) and not because of other client work or firm priorities.

Unless otherwise approved by the Project Director, reimbursement for airline travel costs under this contract shall be limited to coach class fares. Contractor will not bill the State for time in travel status, except for that time during which the individual has performed work on the State's matter while in travel status; in that situation the Contractor shall adhere to billing rates provided in Article 1.1 of this appendix.

Reimbursement of hotel costs shall be limited to a maximum of \$300.00 per night unless otherwise approved by the Project Director. The Contractor shall, when possible, use moderately priced hotels comparable to those used by Department of Law employees. Reimbursement for meals and other incidental expenses shall be made at the flat rate of \$60.00 per day for each full day (midnight to midnight) of travel along with partial payment of \$45.00 for the day of departure and \$45.00 for the day of return.

Article 1.3 Unless the contract is amended in writing, the total sum expended under this agreement shall not exceed \$600,000 including all out-of-pocket expenses.

Article 2. Billing Procedures

Article 2.1 The Contractor agrees to bill the State within thirty days of the end of the monthly billing period. All billing statements shall be sent directly to the state's designated Project Director with a pdf copy emailed to 03ContractPayments@alaska.gov

Article 2.2 The Contractor's billing statements shall be itemized to show the agency contract number, time spent, a task description and the date that tasks were performed by the name and hourly rate of the individual performing the work. All billing statements shall include an itemization of all costs and copies of invoices for travel and other out-of-pocket expenses.

Article 2.3 As a standard cost control practice, the State may conduct an audit of time and cost records of the Contractor, its employees and subcontractors. Any such audit may be conducted at the Contractor's offices or a place mutually agreed to by the Contractor and the Project Director.

Article 2.4 Billing rates are capped for one year from date of execution of the Contract. If after one year the Contractor wishes to seek an adjustment to its billing rates, the Contractor shall:

- a. notify the Project Director and obtain approval in writing at least sixty (60) days before activating any change in billing rates;
- b. specify the impact the rate adjustment would have on the existing workplan and budget; and
- c. limit the change in any individual billing rate to an amount that does not exceed the percentage increase in the Consumer Price Index (CPI) for the locale from which the services are being rendered, or obtain the approval of the Project Director for any increase above the CPI.

If billing rates are increased under this Article, the new rates shall be capped for one year following the date of the increase.