



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

March 29, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Senator Steiner and Representative Sanchez:

I write in support of the Secretary of State Shemia Fagan's budget request for the 2023-25 biennium for funding for one Special Assistant Attorney General to support the work of the Secretary of State's office by acting as on-site General Counsel.

For background, ORS 180.210 establishes the Oregon Attorney General as the chief law officer of the state. Under ORS 180.220(2), the Attorney General is exclusively responsible for providing legal services to state agencies and officers, including the Oregon Secretary of State. Agencies and officers are prohibited from employing their own legal counsel. ORS 180.220(2). However, under ORS 180.140(5), the Attorney General may, in her sole discretion, appoint Special Assistant Attorneys General to provide specified legal services to state officers and agencies if she determines that the appointment is appropriate to protect the interests of the state. The cost is charged to the agency or officer. Special Assistant Attorneys General are subject to the direction and control of the Attorney General, which ensures the state's lawyers speak with one voice.

Exercising my discretion, I have determined it is appropriate to appoint one Special Assistant Attorney General to provide additional legal services to the Secretary of State. That Special Assistant Attorney General will be housed in the Secretary of State's office and will be authorized to provide the services listed in the attached Interagency Agreement.

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The Secretary of State's status as a constitutional officer and the unique legal needs of the Secretary and her office were crucial to my determination. Our office will work closely with the appointed Special Assistant Attorney General and continue to provide other legal services to the Secretary through existing positions housed within the Department of Justice.

Thank you.

Sincerely,



Ellen F. Rosenblum
Attorney General

Enclosure

cc with enclosure:

Secretary of State Shemia Fagan

Deputy Secretary of State Cheryl Myers

INTERAGENCY AGREEMENT

This interagency agreement (“Agreement”) is made between the Oregon Department of Justice (“DOJ”), acting pursuant to ORS Chapter 180, and the Office of the Oregon Secretary of State (“SOS”), acting pursuant to her authority in Article VI, Section 2

RECITALS

1. Under ORS 180.210 and 180.220, the Attorney General of the State of Oregon (the “Attorney General”) is the chief law officer of the State and is exclusively responsible for providing legal services to SOS or authorizing other legal representation for SOS.
2. Under ORS 180.140(5), the Attorney General may appoint Special Assistant Attorneys General, under the direction and control of the Attorney General, for particular cases or proceedings when the Attorney General decides that such appointments are appropriate to protect the interests of the state.
3. Pursuant to Article VI, Sections 1 and 2, of the Oregon Constitution the Secretary of State (the “Secretary”) is an elected constitutional officer responsible for recording the official acts of the executive and legislative branches, serving as auditor of public accounts, and performing other duties assigned by law, and pursuant to Articles IV and XVII of the Oregon Constitution, the Secretary is responsible for certain duties related to elections, initiative petitions and reapportionment of legislative districts.
4. Consistent with the authority granted to the Secretary and SOS as set forth in the previous paragraph:
 - 4.1. Pursuant to ORS 297.010 and 297.020, the SOS is responsible for performing certain audits.
 - 4.2. Pursuant to ORS 246.110, the Secretary, as Oregon’s chief elections officer, is responsible for maintaining uniformity in the application, operation and interpretation of election laws.
 - 4.3. Pursuant to ORS 246.120 to 246.140, the SOS is responsible for providing written directives, assistance and advice to county clerks on the registration of electors and election procedures and for conducting conferences on the administration of election laws for county clerks.
5. The SOS desires immediate and continuous access to legal advice to assist the SOS and the Secretary in fulfilling her duties as described above and to protect the interests of the state.
6. The Attorney General has determined that to protect the interests of the state, it is appropriate to authorize one SOS employee to perform Legal Services as a Special Assistant Attorney General, under the direction and control of the Attorney General, as provided in this Agreement.

AGREEMENT

1. **Definitions.** For purposes of this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning set forth below:
 - 1.1 “Legal Services” means, subject to the limitations set forth in Section 4:
 - 1.1.1. Interpreting and applying legal principles, statutes, and administrative rules to assist the SOS and SOS personnel to carry out the obligations described in Recitals 3 and 4 above;
 - 1.1.2. Interpreting and applying legal principles, statutes, and administrative rules to assist the SOS and SOS personnel to carry out the duties and functions assigned to the SOS under ORS 192.005 through 192.170;

- 1.1.3. Interpreting and applying legal principles, statutes, and administrative rules to assist the SOS and SOS personnel in carrying out the duties and functions assigned to the Secretary as the filing officer under ORS 56.014;
- 1.1.4. Supporting SOS personnel in reviewing and fulfilling public record requests pertaining to SOS functions; and
- 1.1.5. Monitoring and cooperating with DOJ in litigation in which the SOS is a party.

2. **Appointment Legal Services SAAG; Duties and Obligations related to Legal Services SAAG.**

- 2.1. Pursuant to ORS 180.140(5) and as provided in this Agreement, the Attorney General will appoint as a Special Assistant Attorney General (“SAAG”) one attorney who is an employee of the SOS to provide Legal Services (the “Legal Services SAAG”).
- 2.2. The Attorney General’s appointment of the Legal Services SAAG will be made in writing, and pursuant to a process determined by the Attorney General. The Attorney General may withdraw the appointment of the Legal Services SAAG at any time in her sole discretion.
- 2.3. The Legal Services SAAG may not provide Legal Services until the Legal Services SAAG has been duly appointed by the Attorney General as a SAAG and submitted a complete and notarized Oath of Office in the form attached as Exhibit A to this Agreement to the Supervising Attorney (as defined below).
- 2.4. Pursuant to ORS 180.140(5), the Legal Services SAAG will provide the Legal Services under the direction and control of the Attorney General, and as provided in this Agreement. The Attorney General may at any time, in the Attorney General’s sole discretion, assume direct control and supervision of the Legal Services SAAG, terminate or limit the authority of the Legal Services SAAG, transfer all or any portion of the Legal Services performed by the Legal Services SAAG to an Assistant Attorney General or other legal counsel appointed by the Attorney General, or otherwise provide the Legal Services as provided by law. If the Attorney General transfers a particular assignment from the Legal Services SAAG to an Assistant Attorney General or other legal counsel appointed by the Attorney General, this Agreement will remain in force and the Legal Services SAAG may continue to provide Legal Services that the Attorney General has not transferred to other legal counsel. The Legal Services SAAG shall provide the Legal Services in accordance with DOJ Policies and Procedures governing the provision of legal services, which Policies and Procedures the Supervising Attorney will provide to the Legal Services SAAG.
- 2.5. Consistent with ORS 180.220(2) and 180.230, SOS shall not seek or receive legal advice or legal services from, or provide compensation for such advice and services to, any person other than the Legal Services SAAG acting under a current appointment given as provided in this Agreement, the Department of Justice, or an attorney otherwise authorized by the Attorney General to provide such advice or services.
- 2.6. In order to keep the DOJ reasonably informed of the Legal Services provided to SOS by the Legal Services SAAG, SOS shall cause the Legal Services SAAG to deliver periodically to the Supervising Attorney, but no less than quarterly, all copies of final written material legal advice provided by the Legal Services SAAG that SOS has not previously delivered to DOJ, regardless of the medium in which the SOS Legal Services SAAG provided such material advice (e.g., written legal memorandum, emails, etc.).

- 2.7. The Supervising Attorney will provide the Legal Services SAAG with reasonable access to physical and electronic files maintained by the DOJ related to SOS matters reasonably related to the Legal Services.
 - 2.8. The Legal Services SAAG may open files with DOJ for new Legal Services matters. The SOS and the Legal Services SAAG will keep complete files of all such matters in both physical and electronic form consistent with SOS' normal record keeping procedures; provided that the SOS shall limit access to both physical and electronic files related to the Legal Services to only those SOS personnel who have a need to know the information contained in such files, and in a manner that preserves the confidential and privileged nature of the files consistent with the ORCP.
 - 2.9. The SOS and the Legal Services SAAG shall maintain files, documents, correspondence and attorney work product, and the Legal Services SAAG shall provide the Legal Services to the SOS and the Secretary, consistent with the current Oregon Rules of Professional Conduct for lawyers (the "ORCP"), and in a manner, to the extent reasonable and practical in the circumstances, that preserves the lawyer-client privilege between SOS and DOJ (including the Legal Services SAAG) established in ORS 40.225 and ORS 40.227, and the confidentiality of SOS' confidential client information. In no event shall the Legal Services SAAG either (i) take any action that would waive or limit the attorney-client privilege with respect to any state agency client of DOJ other than SOS, or (ii) disclose the confidential client information of any state agency client of DOJ other than SOS.
 - 2.10. The SOS shall require the Legal Services SAAG to immediately notify the Supervising Attorney if the SOS or the Legal Services SAAG become aware of any legal matter in which the SOS or the State of Oregon is or may become involved and for which the Legal Services SAAG's continued representation of the SOS would create a conflict of interest under the ORCP.
 - 2.11. The parties recognize that the Legal Services SAAG may perform SOS administrative functions, including making policy decisions or providing general, non-legal, policy advice if SOS authorizes such functions. Such activities are in addition to and separate from the individuals' responsibilities as a SAAG. Like AAGs, the Legal Services SAAG, acting in their capacity as a SAAG, also may provide policy or business advice to SOS officials on business or policy matters with legal ramifications or a legal component. In other words, a Legal Services SAAG may serve as an administrator and as a SAAG on different matters, but that individual cannot act as administrator and SAAG as to the same matter. As a matter of practice, at the outset of a project or assignment, if the Legal Services SAAG is not participating as a SAAG, then the Legal Services SAAG should make that fact clear to other participants. A careful delineation between such roles will serve to protect the attorney-client privilege and advice of counsel protections.
 - 2.12. DOJ shall not be financially responsible under any circumstance for any expense, salary, employee benefit, or liability relating to or arising from SOS's employment or retention of the Legal Services SAAG.
 - 2.13. If authorized by SOS, the Legal Services SAAG may use one or more of the following law-related titles: J.D.; Special Assistant Attorney General; General Counsel, Chief Legal and Risk Counsel, Deputy General Counsel, or Assistant General Counsel to SOS. The SAAG may not use any other law-related title that the Chief Counsel of the General Counsel Division has not approved in advance.
3. **Designation of a Supervising Attorney.**

- 3.1. Pursuant to ORS 180.060(8), the Attorney General designates the Chief Counsel of the General Counsel Division, Department of Justice (the “Chief Counsel”) as the supervising attorney to the Legal Services SAAG and this Agreement (the “Supervising Attorney”). The Chief Counsel may designate a successor Supervising Attorney upon written notice to SOS.
- 3.2. The Legal Services SAAG will completely and regularly consult with and report to the Supervising Attorney about all matters for which the Legal Services SAAG provides Legal Services. The Legal Services SAAG shall promptly notify the Supervising Attorney of any matters, whether related to the Legal Services or otherwise, of which the Legal Services SAAG becomes aware that have the potential to adversely affect the State, including pending or threatened litigation or regulatory action.
- 3.3. The Legal Services SAAG and the Supervising Attorney will hold regularly scheduled meetings to provide DOJ a regular status report on SOS matters.

4. **Prohibited Activities; Requests for Additional Authority.**

- 4.1. The authority of the Legal Services SAAG is limited to providing the Legal Services as defined herein. For the avoidance of doubt, the Legal Services SAAG is not authorized and shall not perform and shall not act as or purport to act as legal counsel to the Secretary, the SOS or the State of Oregon with respect to, without limitation, the following categories of legal matters:
 - 4.1.1. Review and approval of public contracts pursuant to the Attorney General’s authority under ORS 291.045 through ORS 291.049, and related administrative rules;
 - 4.1.2. Representing the Secretary, SOS or the State of Oregon in any legal proceeding in any state or federal court;
 - 4.1.3. Representing the Secretary, SOS or the State of Oregon in any alternative means of dispute resolution conducted pursuant to ORS 183.502, or consenting on behalf of SOS or any other agency of the State of Oregon to participate in any such alternative means of dispute resolution;
 - 4.1.4. Representing the Secretary, SOS or the State of Oregon in any state or federal administrative hearing; or
 - 4.1.5. Representing or providing advice to any agency or official other than the Secretary and SOS in any context, including in the context of the SOS performing its audit functions as described in Recitals 3 and 4 of this Agreement.
- 4.2. Neither the Legal Services SAAG, the Secretary, nor any SOS personnel, may consent to a lawyer’s representation of a party adverse to the SOS or the State of Oregon if the lawyer requires the consent of the SOS or the State of Oregon under the ORCP to continue with that representation.
- 4.3. If the SOS desires that the Legal Services SAAG represent the Secretary, the SOS or the State of Oregon in matters or classes of matters that are not Legal Services as defined in this Agreement, the SOS may request in writing to the Supervising Attorney that the Attorney General authorize the Legal Services SAAG to represent the Secretary, the SOS, or the State of Oregon as to that matter or class of matters. The request will specifically identify the matter(s) for which such authorization is sought, and specifically describe the nature of the legal services to be rendered. The Attorney General will grant or deny the request in writing in the Attorney General’s sole discretion. The Attorney General may limit the scope of the permissible representation with respect to such matters in her written appointment given under this Section

4.4. DOJ will not be financially responsible under any circumstances for any expenses or liabilities of SOS relating to Legal Services performed by the Legal Services SAAG pursuant to the grant of additional authority given under section 4.3, including but not limited to the Legal Services SAAG's salary and benefits.

5. **Independent, Outside Counsel.**

5.1. SOS may request that DOJ engage independent outside counsel in accordance with ORS 180.140(5), to provide additional assistance to the SOS with the Legal Services. The Attorney General will grant or deny the request in the Attorney General's sole discretion.

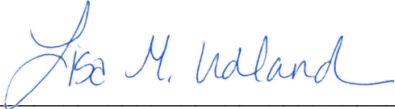
5.2. If the Attorney General determines that engaging outside counsel in response to a request made under Section 5.1, the DOJ will engage, and the Attorney General will appoint, such outside counsel in accordance with the DOJ's normal procedures for engaging and appointing outside counsel to provide legal services for the benefit of a state agency. The SOS, and not the DOJ, will be financially responsible for the fees and any expenses due to outside counsel providing legal services for the benefit of the Secretary or the SOS.

6. **Effective Date.** The term of this Agreement begins on _____, 2023, and will terminate on December 31, 2024. Thereafter, this Agreement will renew for successive terms agreed to by the Parties unless terminated pursuant to Section 7 below.

7. **Termination.**

7.1. Either party may terminate this Agreement upon a good faith determination that the other party has breached a material term of the Agreement and has not cured such breach within 30 days of receipt of the notice from the non-breaching party.

7.2. Either party may terminate the Agreement at any time in its sole discretion.



3/14/23

Lisa M. Udland
Deputy Attorney General
Oregon Department of Justice

Date



3/14/23

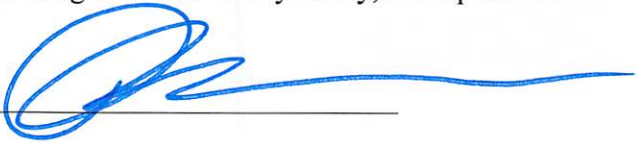
Cheryl Myers
Deputy Secretary of State

Date

STATE OF OREGON
Department of Justice
OATH of OFFICE

State of Oregon)
) ss.
County of MULTNOMAH)

I, P.K. Runkles-Peterson , do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability, so help me God.



Subscribed and sworn to before me this 10 day of March , 2023.



Notary Public for Oregon

My commission expires 07/16/2024

Note: Execute this oath of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.