



Sandy City Council Office

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Memorandum

December 14, 2020

To: Sandy City Council
CC: Mike Applegarth, Council Executive Director
From: Dustin Fratto, Council Office Assistant Director
Subject: Council Legal Services *Amended*

Background

The City Council has a legal services contract with Cowdell & Woolley P.C. (CW). The original agreement began on June 1, 2018 and expired December 31, 2019. The City Council extended the contract through June 30, 2020, again for 90 days from July 1, 2020, and once more through December 31, 2020. The current agreement may be extended and/or renewed for additional terms. With the current agreement expiring at the end of the calendar year the Council has arrived at a decision point. This report will outline possible courses of action and options the Council may consider in deciding the future of its legal services. I should note that the following options are not listed in any specific order.

Option 1: Maintain Cowdell Woolley as Council Legal Counsel.

Should the Council make the determination that it is satisfied with the services that have been provided by CW and that the services provided are still necessary they may choose to extend or amend the expiring contract in one many ways:

- A. Maintain status quo. Tracy Cowdell will serve as the sole provider of legal services for the Council and will be available as needed/requested by Council members and staff. CW will charge an hourly rate of \$210.00. In FY19, FY20, and FY21 (through November 30th) the total cost of the CW contract was \$13,865 (1.3 hours/week), \$32,550 (3.0 hours/week), and \$21,315 (4.7 hours/week), respectively.

Pros: Total continuity and budgetary flexibility. This option may also be helpful to the Council as it grows accustom to working with a new City Attorney. Assuming the Council continues to use CW approximately the same number of hours as they have over the past two FY's (less than 6.5 hours/week) the hourly rate will result in budgetary savings.

Cons: Unknown expense and questionable equity. It is difficult to know what to expect budgetarily, while the Council can place a cap on spending, doing so could put them in an undesirable situation assuming the cap is met, and a need arises afterwards. The hourly method may also lead to questions of equity amongst Council Members.



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- B. Maintain Tracy Cowdell as the sole provider of legal services doing all legal work that is requested of him and attending all Council Meetings (excluding illness/traveling). Move to a flat monthly rate of \$6,000 (\$72,000 annually).

Pros: Total continuity and improved equity. Mr. Cowdell will continue as council legal counsel in a similar fashion providing continuity. The flat rate will help solve the issue of equity amongst Council Members as no individual member will be absorbing a greater deal of financial resources invested in legal counsel than another. Should the Council desire to maintain Mr. Cowdell as our sole legal services provider and they utilize CW services more than 6.5 hours/week, this option will result in budgetary savings.

Cons: Budgetary flexibility. This option requires a significant guaranteed investment in Council legal services. Should the Council use CW less than 6.5 hours/week it will result in "lost money."

- C. Tracy Cowdell will serve as the primary provider of legal services providing all legal work that is requested of him with the assistance of one associate attorney from CW. In this scenario, Mr. Cowdell will attend most meetings, with his associate attending from time to time. Move to a flat monthly rate of \$5,000 (\$60,000 annually).

Pros: Significant Continuity and improved equity, budgetary savings over option 1B. While an associate of CW will participate in some legal analysis Mr. Cowdell will still serve as the primary provider of legal services providing continuity. As in option 1B, the flat rate will help solve the issue of equity amongst Council Members as no individual member will be absorbing a greater deal of financial resources invested in legal counsel than another. Should the Council find it acceptable to have a second attorney from CW producing legal work, this option has a lower budgetary impact than option 1B and would also have a lower budgetary impact than option 1A assuming the council utilizes the services of CW more than 5.5 hours/week.

Cons: Budgetary flexibility, small loss of continuity. This option requires a significant guaranteed investment in Council legal services. Should the Council use CW less than 5.5 hours/week it will result in "lost money." Some small amount of continuity may be lost in bringing in an associate from CW.

- D. An associate attorney from CW will serve as the primary provider of legal services doing all legal work that is requested of him/her. The associate will attend most of the Council meetings, with Mr. Cowdell attending from time to time and assisting with especially challenging projects. Move to a flat monthly rate of \$4,000.00 (\$48,000 annually).

Pros: Improved equity, budgetary savings over options 1B and 1C. Similarly, to options 1B and 1C, the flat rate will help solve the issue of equity amongst Council Members as no individual member will be absorbing a greater deal of financial resources invested in legal counsel than another. Should the Council find it acceptable to have a second attorney from CW serving as the primary provider of legal services this option has a lower budgetary impact than options 1B and 1C. This option would also have a lower budgetary impact than option 1A assuming the council utilizes the services of CW more than 4.5 hours/week.



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Cons: Budgetary flexibility, significant loss of continuity. This option requires a significant guaranteed investment in Council legal services. Should the Council use CW less than 4.5 hours/week it will result in "lost money." A significant amount of continuity may be lost in bringing in an associate from CW as the primary provider of legal services to the Council.

Option 2: Let the Cowdell Woolley contract expire, initiate an RFP for legal services, and possibly execute a contract with a new attorney/firm

The Council may choose not to renew the CW contract and instead issue a RFP for Council legal services. The initial RFP that led to the selection of CW was issued in early 2018 and was left open for several weeks. In that time two attorney's/firms responded with an application. The Council extended an offer to one of the applicants and the offer was turned down. An offer was then extended to CW.

Pros: The current Council will have the opportunity to go through the process of selecting its' legal counsel.

Cons: Based on our previous experience, there is a reasonable chance that the Council will not receive any responses to the RFP. Should the Council decide to pursue different legal counsel quite a few unknowns will need to be tackled (cost, ability, continuity, relationship building, trust building, etc.)

Option 3: Let Cowdell Woolley contract expire and explore new avenues for Council legal services

Outside of a contracted attorney/firm there are other options for legal assistance that the Council may choose to consider:

- A. Reorganization of the City Attorney's Office. The Council may consider funding an existing attorney from the City Attorney's Office (anywhere from 0.25-1.00 FTE's) directly from the City Council Office budget. This would require reorganizing the attorney's reporting structure so that they report jointly to the City Attorney and the City Council Executive Director.

Pros: Budgetary Savings, quasi-separate legal representation, and improved equity. Relying fully upon an existing City employee for all legal services would result in budgetary savings as no additional flat/hourly rate would be expended on outside legal counsel. The Council would have immediate access to an attorney that is not fully indebted to the office of the Mayor.

Cons: Potential awkwardness for the employee, loss of a partial FTE for the City Attorney's Office, new equity concerns, loss of continuity. The employee that is split between the executive and legislative branches may often be placed in awkward and uncomfortable political positions directly between the two branches of government. The City Attorney's Office would inevitably lose some portion of an FTE that is presently working on important legal business for the City. That gap would need to be filled in some fashion. Similarly, to the status quo option concerns of equity may still exist. If the employee is splitting time between the executive and legislative branches, they will have a limited number of hours to contribute to the Council. Concerns may arise of individual members using more than their fair share of available hours, although this



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version of inequity would not have the same budgetary consequences as those found in Option 1A. Similarly, to any option that requires moving on from current counsel, continuity may be of concern.

- B. Creating a new Council Attorney position within the City Council office. This position could potentially be full, or part time depending on the desires of the Council and would result in a City Employee who advises the legislative branch of government in the same fashion as other legislative staff.

Pros: The Council would have access to legal counsel that reports solely to the legislative branch. The Council Attorney would represent the Council only and would not have other clients as a contractor would.

Cons: Budgetary impacts, possible equity concerns, loss of continuity. This is more than likely the most expensive option. Creating a new position with benefits would ultimately result in an estimated budgetary impact of \$59,000 (0.5 FTE) to \$118,000 (1.0 FTE). Equity concerns may still exist, especially if the employee works limited hours (0.5 FTE). There will be an initial loss of continuity in the position, however, since this a more long-term solution to council legal services, it may improve continuity in the long run.

Option 4: Let Cowdell Woolley contract expire and forego Council legal services altogether

Should the Council determine that it no longer requires its own legal counsel, it may choose not to renew the CW contract and instead rely fully upon the City Attorney for all legal services.

Pros: Budgetary savings. Relying fully upon the City Attorney for all legal services would result in budgetary savings as no additional flat/hourly rate would be expended on outside legal counsel.

Cons: Timeliness, politics, and conflicts. The City Attorney's office is quite busy and may be unable to place the same priority on Council needs as an attorney/firm hired specifically by and for the Council. The City Attorney serves at the discretion of the Office of the Mayor. Due to this fact, it is almost inevitable that at one time or another political pressure may interfere with the City Attorney's ability to serve both branches of government equitably. Outside of politics, Bona fide conflicts may arise where the City Attorney cannot represent the City and the City Council concurrently.

Staff Recommendation

Over the past 2 years the Council has run into an occasion or two when political differences between the two branches of government may have interfered with legal services provided to the Council by the City Attorney's Office. It is staff's opinion that this alone is reason enough for the Council to retain its own legal services in one fashion or another.

Staff recommends extending the CW contract in its current form for an additional 6 months. While exploring your new relationship with the City Attorney you should pay specific attention to how much



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work is being assigned to CW and how many hours are being billed each billing cycle, reduced to a weekly average. Near the end of the 6-month test period the Council should examine this data and broach the subject again. While it is our belief that separate Council legal counsel is necessary, you should make the final decision following the 6-month period. Should you, at that time, determine that legal services are indeed still a necessity, the Council should discuss which of the options in this memo fit best.