

Michigan Independent Citizens Redistricting Commission

Voting Rights Act Legal Counsel

Request for Proposal No. 920, 210000001155

Response of

TUETH KEENEY COOPER MOHAN JACKSTADT PC

34 N. MERAMEC AVE., SUITE 600

ST. LOUIS MO 63105

Section 2. CONFIDENTIAL TREATMENT IS REQUESTED

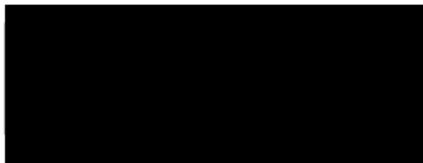
(1) Proposal Page #, Section #, Paragraph #	(2) Material is Trade Secret (TS), Proprietary Financial Information (FI), Proprietary Information (PI)	(3) Applicable FOIA Exemption with Written Justification	(4) Bidder Contact Information
Item 2, response to "State your gross annual sales for each of the last 5 years."	FI: The gross revenue of the offeror is proprietary information, being provided voluntarily by the offeror.	15.243(1) (a) The information is personal to the Firm and its disclosure would be an unwarranted invasion of privacy"; (i) The information is contained within a bid or proposal";	James Layton jlayton@tuethke ney.com

By signing below, the bidder affirms that confidential treatment of material contained in their proposal is requested and has attached to this form a redacted "Public Copy" of the bidder's proposal.

RFP Number 920, 210000001155

RFP Title Voting Rights Act counsel

Signature



Date 16 March 2021

James R. Layton, Of Counsel
Tueth Keeney Cooper Mohan Jackstadt PC

VENDOR QUESTIONS WORKSHEET

Provide a detailed response to each question. "You" and "company" refers to the bidder.

Information Sought	Bidder Response
1. Contact Information	
Bidder's sole contact person during the RFP process. Include name, title, address, email, and phone number.	James Layton Of counsel Tueth Keeney Cooper Mohan Jackstadt PC [REDACTED] St. Louis MO 63015 [REDACTED] [REDACTED]
Person authorized to receive and sign a resulting contract. Include name, title, address, email, phone number. The awarded vendor will be required to establish an account in SIGMA Vendor Self-Service	Same.
2. Company Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	Tueth Keeney Cooper Mohan Jackstadt PC
What State was the company formed in?	Missouri
Phone number.	314-880-3600
Website address.	www.tuethkeeney.com
Number of years in business and number of employees.	20 years. 44 employees.
Legal business name and address of parent company, if any.	None.
Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	No.
Discuss your company's history. Has growth been organic, through mergers and acquisitions, or both?	The firm was established in the year 2000 by a group of eighteen attorneys who separated from a large Midwest firm. It has grown by adding individual lawyers; there has been no merger or acquisition.
Has bidder ever been debarred, suspended, or disqualified from bidding or contracting with any entity, including the State of Michigan? If yes, provide the date, the entity, and details about the situation.	No.

VENDOR QUESTIONS WORKSHEET

<p>Has your company been a party to litigation against the State of Michigan? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction.</p>	<p>No.</p>
<p>Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.</p>	<p>No.</p>
<p>State your gross annual sales for each of the last 5 years.</p> <p>If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.</p>	<p>[Gross Revenue omitted from this version]</p> <p>The contract will not increase gross revenue by more than 25%</p>
<p>Describe partnerships and strategic relationships you think will bring significant value to the Commission.</p>	<p>None.</p>
<p>For the bidder, primary contractor, principal(s) of the primary contractor, key personnel, any subcontractors, or employees provide disclosures regarding the following relative to their redistricting work with individuals, groups or any public or private entities for the same or substantially similar work described in this RFP: (1) list of past relationships and (2) identify any current relationships and (3) identify any anticipated or future relationships that will be sought by the bidder. For each of the 3 categories of relationships, please identify which could give rise to a potential, actual or apparent conflict of interest and provide measures that would be taken to avoid or address a conflict, should one currently exist or would likely arise in the future.</p> <p>These disclosure and conflict requirements are ongoing and will be the responsibility of the successful bidder for the full contract term.</p>	<p>(1) Mr. James Layton, while employed by the Missouri Attorney General's Office, represented the State of Missouri regarding redistricting follow the 2000 and 2010 censuses. He also advised the Missouri redistricting commissions.</p> <p>(2) None.</p> <p>(3) The Firm anticipates advising governmental entities in Missouri, and perhaps Illinois, regarding redistricting. The Firm could be retained to represent such entities or individuals in redistricting litigation in Missouri.</p>
<p>State the physical address of the place of business that would have primary responsibility for this account if bidder is awarded a contract under this RFP.</p>	<p>██ St. Louis MO 63015</p>
<p>3. Participation in RFP Development or Evaluation</p>	
<p>Did your company, an employee, agent, or representative of your company, or any affiliated</p>	<p>No.</p>

VENDOR QUESTIONS WORKSHEET

<p>entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees.</p>	
<p>If you are awarded a contract under this solicitation, in order to provide the goods or services required under a resulting contract, do you intend to partner or subcontract with a person or entity that assisted in the development of this solicitation?</p>	<p>No.</p>
<p>Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP?</p>	<p>No.</p>
<p>4. State of Michigan Experience and Prior Experience</p>	
<p>Does your company have experience working with the State of Michigan? If so, please provide a list (including the contract number) of the contracts you hold or have held with the State for the last 10 years.</p>	<p>No.</p>
<p>Describe all relevant experiences from the last 20 years supporting your ability to successfully manage a contract of similar size and scope for the work described in this RFP. These experiences should include:</p> <ul style="list-style-type: none"> • Significant expertise and experience in providing legal and advisory services specific to the Voting Rights Act (“VRA”), redistricting, and issues of equal protection and race in redistricting. • Experience and expertise in Michigan Election Law as it pertains to the Michigan Election Law (Act 116 of 1954). • Experience or expertise providing legal counsel and guidance to public bodies, boards or commissions 	<p>See experiences listed below.</p>

VENDOR QUESTIONS WORKSHEET

Experience 1	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>Missouri Senate Nonpartisan Redistricting Commission</p> <p><i>Among the members were:</i></p> <p>John Borbonus (D) Circuit Judge [REDACTED] Clayton, MO 63105 [REDACTED] [REDACTED]</p> <p>John Maupin ® [REDACTED] [REDACTED]</p> <p>For other members, see https://ballotpedia.org/Redistricting_in_Missouri_after_the_2010_census</p> <p><i>Staff Director was:</i></p> <p>Matt Hesser State Demographer, OA Budget & Planning [REDACTED] [REDACTED]</p>
<p>1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	<p>1. Provided training and advice to the commissions regarding all legal aspects of redistricting. 2. Mr. Layton provided the training and advice. 3. The training and advice included compliance with the Voting Rights Act</p>
Dollar value.	n/a
Start and end date (mm/yy – mm/yy)	2011-2012
Status (completed, live, other – specify phase)	Completed
Results obtained.	The commissions deadlocked, and did not produce a redistricting plan.

VENDOR QUESTIONS WORKSHEET

Experience 2	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>Missouri House Nonpartisan Redistricting Commission</p> <p><i>Among the members were:</i></p> <p>Joe Maxwell (D)</p> <p>████████████████████</p> <p>████████████████</p> <p>Ann Wagner (R)</p> <p>https://wagner.house.gov/</p> <p>For other members, see: https://ballotpedia.org/Redistricting_in_Missouri_after_the_2010_census</p> <p><i>Staff Director was:</i></p> <p>Matt Hesser</p> <p>State Demographer, OA Budget & Planning</p> <p>████████████████</p> <p>████████████████████</p>
<p>1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	<p>1. Provided training and advice to the commissions regarding all legal aspects of redistricting.</p> <p>2. Mr. Layton provided the training and advice.</p> <p>3. The training and advice included compliance with the Voting Rights Act</p>
Dollar value.	n/a
Start and end date (mm/yy – mm/yy)	2011-2012
Status (completed, live, other – specify phase)	Completed
Results obtained.	<p>The commission deadlocked, and did not produce a redistricting plan.</p>

VENDOR QUESTIONS WORKSHEET

Experience 3	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>State of Missouri Attorney General Chris Koster Now General Counsel, Centene Corp. [REDACTED] [REDACTED]</p>
<p>City. State. Zip.</p>	<p>Jefferson City MO 63102</p>
<p>1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	<p>1. Defend redistricting plans 2. Mr. Layton, while at the Attorney General's office, handled the cases for the State of Missouri 3. The cases involved a wide range of challenges, including Voting Rights Act issues.</p>
<p>Dollar value.</p>	<p>n/a</p>
<p>Start and end date (mm/yy – mm/yy)</p>	<p>2012</p>
<p>Status (completed, live, other – specify phase)</p>	<p>Complete</p>
<p>Results obtained.</p>	<p>See <i>Pearson v. Koster</i>, 359 S.W.3d 35 and 367 S.W.3d 36 (Mo. 2012); <i>Johnson v. State</i>, 366 S.W.3d 11 (Mo. 2012)</p>
Experience 4	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>Missouri Senate Nonpartisan Redistricting Commission <i>Staff Director was:</i> Ryan Burson Then-State Demographer, OA Budget & Planning Now at US Bureau of the Census [REDACTED] [REDACTED]</p>
<p>City. State. Zip.</p>	

VENDOR QUESTIONS WORKSHEET

<p>1. Project name and description of the scope of the project.</p> <p>2. What role did your company play?</p> <p>3. How is this project experience relevant to the subject of this RFP?</p>	<p>1. Provided training and advice to the commissions regarding all legal aspects of redistricting.</p> <p>2. Mr. Layton provided the training and advice.</p> <p>3. The training and advice included compliance with the Voting Rights Act</p>
Dollar value.	n/a
Start and end date (mm/yy – mm/yy)	2001-2002
Status (completed, live, other – specify phase)	Completed
Results	The commissions deadlocked, and did not produce a redistricting plan.
Experience 5	
<p>Company name.</p> <p>Contact name.</p> <p>Contact role at time of project.</p> <p>Contact phone.</p> <p>Contact email.</p>	<p>Missouri House Nonpartisan Redistricting Commission</p> <p><i>Staff Director was:</i></p> <p>Ryan Burson</p> <p>Then-State Demographer, OA Budget & Planning</p> <p>Now at US Bureau of the Census</p> <p>██████████</p> <p>██</p>
<p>City.</p> <p>State.</p> <p>Zip.</p>	
<p>1. Project name and description of the scope of the project.</p> <p>2. What role did your company play?</p> <p>3. How is this project experience relevant to the subject of this RFP?</p>	<p>1. Provided training and advice to the commissions with regard to all legal aspects of redistricting.</p> <p>2. Mr. Layton provided the training and advice.</p> <p>3. The training and advice included compliance with the Voting Rights Act</p>
Dollar value.	n/a
Start and end date (mm/yy – mm/yy)	2001-2002
Status (completed, live, other – specify phase)	Completed
Results	The commissions deadlocked, and did not produce a redistricting plan.

VENDOR QUESTIONS WORKSHEET

Experience 6	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>Ferguson-Florissant School Ms. Cindy Ormsby [REDACTED] [REDACTED]</p>
<p>City. State. Zip.</p>	<p>St. Louis MO 63105</p>
<p>1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	<p>Assist with briefing and argument preparation for Voting Rights Act case brought against a school district.</p>
Dollar value.	n/a
Start and end date (mm/yy – mm/yy)	2017-18
Status (completed, live, other – specify phase)	Completed
Results	<p>The court of appeals upheld the district court's order to change the method of school district elections. <i>Missouri State Conf. of NAACP v. Ferguson-Florissant School District</i>, 894 F.3d 924 (8th Cir. 2018)</p>
Experience 7	
<p>Company name. Contact name. Contact role at time of project. Contact phone. Contact email.</p>	<p>The Firm represents well over 100 school districts, providing general counsel and litigation services. The Firm has assisted those districts with election-related matters since the Firm was organized in 2000.</p>
<p>City. State. Zip.</p>	
<p>1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	
Dollar value.	n/a

VENDOR QUESTIONS WORKSHEET

Start and end date (mm/yy – mm/yy)	2000-present
Status (completed, live, other – specify phase)	Ongoing
Results obtained.	
5. Standard Contract Terms	
Bidder must affirm agreement with the attached Contract Terms. If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	We affirm agreement with the attached contract terms.
6. Michigan Economic Impact	
Number of employees currently employed at locations within the State of Michigan.	None.
Number of additional employees to be employed at locations within the State of Michigan if awarded this Contract (if any)	None.
Minimum wage paid to employees employed at locations within the State of Michigan.	None.
Average wage paid to employees employed at locations within the State of Michigan.	None.
Percentage of employees employed at locations within the State of Michigan that are covered by employer-provided health insurance.	None.
8. Other	
Abusive Labor Practices. The Contractor certifies that it will not furnish any Deliverable that was produced fully or partially by forced labor, forced or indentured child labor, or indentured servitude.	Yes.
Certification of Michigan Business- Public Act 431 of 1984, Sec. 268. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Business Tax Corporate Income Tax Return. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Income Tax return showing income generated in, or attributed to the State of Michigan. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, withheld Michigan Income Tax from compensation paid to the company's owners and remitted the tax to the Michigan Department of Treasury.	No. The firm has not done business in, nor had income from, the State of Michigan.

VENDOR QUESTIONS WORKSHEET

Iran Linked Business- Public Act 517 of 2012. I certify that the Company is not an Iran-Linked business as defined by Public Act 517 of 2012.	Yes.
Clean Corporate Citizen. I certify that the Company is a Clean Corporate Citizen as defined by the Environmental Protection Act, 1994 PA 451.	No.
Convict Labor. The Contractor certifies that if using convict labor, it is complying with all applicable state and federal laws and policies.	Yes.
SOM Debt/Tax Payment. I certify that all applicable State of Michigan taxes are paid, and that no outstanding debt is owed to the State of Michigan.	Yes.
Authorization to Verify Information Provided by Vendor. I authorize the Commission to verify that all information provided in this registration, in bidding and contracting documents, and any attachments or supplement documents and processes are accurate.	Yes.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

Tueth Keeney Cooper Mohan Jackstadt PC

Request for Proposal (RFP) No. 920, 210000001155

Voting Rights Act Legal Counsel

This schedule identifies the anticipated requirements of any Contract resulting from this RFP. The term "Contractor" in this document refers to a bidder responding to this RFP, as well as the Contractor who is awarded the contract. The term "bidder" is used to identify where specific responses to the RFP are required.

The Contractor must respond to each requirement or question and explain how it will fulfill each requirement. Attach any supplemental information and appropriately reference within your response.

IMPORTANT NOTE TO CONTRACTORS/BIDDERS: There are specific requirements for which acceptance must be simply acknowledged through a checkbox(es), and others that require further explanation. Click one checkbox and complete the entries as identified.

BACKGROUND

In accordance with the Michigan Constitution of 1963, Article IV, Section 6, an Independent Citizens Redistricting Commission (the "Commission") shall adopt a redistricting plan in Michigan, not later than November 1 in the year immediately following the federal decennial census, for each of the following types of Michigan districts: state senate districts, state house of representative districts, and congressional districts. This proposal and adoption of district lines (called "redistricting") shall comply with the Voting Rights Act and other federal laws as well as conform with all criteria set forth in Article IV, Section 6 of the Michigan Constitution, and in particular Article IV, Section 6, subsection 13 of the Michigan Constitution.

The Commission is seeking Requests for Proposals ("RFP") from attorneys, law firms or other entities, to provide legal and advisory services specific to the analysis and application of the Voting Rights Act ("VRA") and other state and federal laws applicable to redistricting, for the inaugural Commission. These legal and advisory services will aid the Commission in the proposal and adoption of redistricting plans, pursuant to the Michigan Constitution of 1963, Article IV, Section 6.

STATEMENT OF WORK

The required legal and advisory services may include, but will not be limited to, legal support to the Commission as well as Commission staff, attorneys and consultants regarding the redistricting process based on publicly available data, specifically as it relates to compliance

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

with the federal Voting Rights Act and similar criteria outlined in Article IV, Section 6, subsection 13 of the Michigan Constitution of 1963.

Any Contractor selected by the Commission will be required to enter into a Legal Services Agreement for the work described in this RFP. It is anticipated that work will begin as soon as practicable following the RFP selection process and continue through approximately March 2022.

Applicants must have demonstrated expertise in the federal Voting Rights Act and the application of it in evaluating redistricting plans during a redistricting process. In addition, expertise with Michigan Election Law (Act 116 of 1954) and relevant federal and state case law are preferred. Participation in public meetings as requested by the MICRC is required.

Qualifications and responsibilities for the attorney, law firm or other entity are as follows below:

1. Perform all normal and customary duties required of special redistricting counsel in connection with legal issues related to the full range of redistricting activities.
2. Work with and advise the Commission, its staff, attorneys and consultants with respect to legal issues (in particular pertaining to the Voting Rights Act) in connection with drawing new district boundaries and advise the Commission, its staff, attorneys and consultants as to the procedures, legality of documents, policy concerns and legal implications concerning redistricting activities.
3. Advise the Commission, its staff, attorneys and consultants regarding the requirements of State and Federal laws relevant to redistricting activities, and in particular demonstrate expertise and experience with Section 2 and Section 5 of the Voting Rights Act, and subsequent relevant cases.
4. Advise the Commission, its staff, attorneys and consultants of litigation risks associated with redistricting activities and approaches to limit such risks.
5. Participate in litigation or provide expert witness services related to compliance with the Voting Rights Act as well as state and federal laws. This legal support and defense of the redistricting plans approved by the Commission will be provided in consultation with the General Counsel of the Commission.
6. Attend various meetings and hearings, including but not limited to Commission public meetings and hearings when requested by Commission members or its staff or the Program Manager.

Contractors, subcontractors and employees must be in compliance with any applicable law or policy at all times, and if an attorney be in good standing with the State Bar of Michigan or their state licensing entity through the full contract term and any extensions. If the primary contractor is not licensed to practice in the State of Michigan, please provide information on local counsel that would be engaged or the process that would be used to select local counsel if direct representation becomes necessary, and whether their role is anticipated to be advisory or more substantive in nature. Contractor must possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Contract on the terms and conditions describes herein.

1 Requirements

1.1 Key Deliverable One

Key expertise or desirable expertise to fulfill the Statement of Work above:

- (a) **Redistricting Expertise.** The attorney, firm or other entity must demonstrate experience and expertise in legal and advisory services specific to redistricting and the Voting Rights Act (“VRA”) to advise the Commission, its staff, attorneys and consultants.

Provide a description of demonstrated expertise and experience with redistricting, reapportionment districting and elections activities and subsequent relevant cases, including the following:

- i) Names of the public entities or private parties represented in redistricting matters, including experience representing public bodies, boards or commissions.
- ii) The principle legal issues presented in each matter handled by the attorney, law firm or entity.
- iii) The outcome of the prior redistricting representation.
- iv) Any relevant published work.
- v) Specifically address demonstrated experience as it pertains to Section 2 and Section 5 of the Voting Rights Act.

Bidder must provide a detailed response for requirement(s):

Mr. James Layton of the Firm was counsel for all redistricting activities for the State of Missouri—and the Missouri redistricting commissions—following the 2000 and 2010 censuses. He provided training and counsel regarding all matters—specifically including the Voting Rights Act. He advised and/or represented:

2001 Missouri House Redistricting Commission

2001 Missouri Senate Redistricting Commission

2011 Missouri House Redistricting Commission

2011 Missouri Senate Redistricting Commission

State of Missouri (in litigation regarding legislative and congressional redistricting), 2012

Mr. Layton also assisted with briefing and argument preparation in a 12-16=17 appeal in a Voting Rights Act case, *Missouri State Conf. of NAACP v. Ferguson-Florissant School District*, 894 F.3d 924 (8th Cir. 2018)

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

- (b) **Michigan Election Law Expertise.** It is desirable that the attorney, firm or other entity demonstrate experience and expertise in Michigan Election Law.

Provide a description of demonstrated expertise and experience in advisory and legal services (if any) as it pertains to Michigan Election Law (Act 116 of 1954), including number of years' experience.

Bidder must provide a detailed response for requirement(s):

Although Mr. Layton has extensive experience with election cases in Missouri, he has no Michigan-specific experience.

- (c) **Cumulative Experience.** Provide a summary of why, based on previous experience, the Contractor is uniquely qualified to assume the role of Voting Rights Act Legal Counsel for the Commission.

Bidder must provide a detailed response for requirement(s):

Mr. Layton is one of the few attorneys not now in government who has worked on Voting Rights Act matters relating to redistricting without representing any political party, candidate, or surrogate.

1.2 Key Deliverable Two

Key operational requirements and inquiries to fulfill the scope of work above:

- (a) **Key Personnel.** In the case of a law firm or other entity, identify the lead attorney or other attorneys, if any, who will be assigned to the work and the anticipated percentage of time for each. Attorneys shall provide their state identification numbers and attest that they are in good standing with the state licensing agency. If the contractor is not licensed to practice in the State of Michigan, provide information on local counsel that would be engaged or the process that would be used to select local counsel if direct representation becomes necessary, and whether their role is anticipated to be advisory or more substantive in nature.

Bidder must provide a detailed response for requirement(s):

The lead attorney would be Mr. James Layton, He is in good standing in the Missouri bar, No. 45631.

Mr. Layton has recently been co-counsel with Michigan attorneys in matters relating to tax assessments, and is in contact with former peers and current attorneys in the Michigan Attorney General's Office. He would use those contacts to identify local litigation counsel, if required.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

(b) **Motivations.** Provide a summary of why the attorney, firm or other entity seeks to serve the Commission.

Bidder must provide a detailed response for requirement(s):

Mr. Layton would like to use the expertise he developed in working with Missouri redistricting commissions after the 2000 and 2010 censuses to assist governmental entities elsewhere that are engaged in redistricting following the 2020 census.

(c) **Disclosures.** Disclose the following;

- i) Previous legal services (paid or volunteer) by the attorney, firm, or other entity as it relates to redistricting, reapportionment, districting and elections activities provided to persons holding elective office, as well as partisan or non-partisan entities or organizations
- ii) Any monetary political contributions or donations made on behalf of the attorney, firm or other entity
- iii) Any monetary political contributions personally made by the attorneys listed in question 1.2(a).

Bidder must provide a detailed response for requirement(s):

Neither Mr. Layton nor any attorney in the firm has assisted persons holding or seeking office, nor partisan nor non-partisan organizations, with regard to redistricting. Mr. Layton has assisted State of Missouri agencies involved in redistricting. Other attorneys in the firm have counseled public entity clients with regard to redistricting.

(d) **Approach.** Provide a description of the approach of the attorney, firm or other entity to performing the responsibilities of Voting Rights Act Legal Counsel while remaining impartial, unbiased and non-partisan as set forth in Article IV, Section 6, Subsections 4 and 5 of the Michigan Constitution.

Bidder must provide a detailed response for requirement(s):

Mr. Layton would, while serving the Commission, not represent partisan efforts to influence redistricting in Michigan.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

1.3 Training

The Contractor must explain its training capabilities and any training that is included in its proposal, if any.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must explain its training capabilities and any training that is included in its proposal: Mr. Layton provided training to the Missouri commissions in 2001 and 2011, and can provide training to the Michigan commission.	

2 Service Requirements

2.1 Timeframes

All Contract Activities must be delivered pursuant to work plans and internal deadlines set by the Commission. The receipt of order date is pursuant to the **Notices** section of the *Standard Contract Terms*.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

3 Reserved

4 Staffing

4.10 Contractor Representative

The Contractor must appoint one (1) contract administrator specifically assigned to the Commission account(s), who will respond to Commission inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
The contractor representative would be Mr. layton	

4.11 Work Hours

The Contractor must provide Contract Activities during the Commission's normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST and possible night and weekend hours depending on the requirements of the project.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

4.12 Key Personnel

The Contractor must identify all Key Personnel who will be directly responsible for the day-to-day operations of carrying out the key deliverables of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the Commission account, be knowledgeable on the contractual requirements, and respond to Commission inquiries within 24 hours.

Contractor's Key Personnel are expected to be available to participate in all MICRC meetings virtual or in person.

The Commission has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the Commission of the proposed assignment, introduce the individual to the Commission's Program Manager, and provide the Commission with a resume and any other information about the individual reasonably requested by the Commission. The Commission reserves the right to interview the individual before granting written approval. In the event the Commission finds a proposed individual unacceptable, the Commission will provide a written explanation including reasonable detail outlining the reasons for the rejection. The Commission may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the Commission. The Contractor's removal of Key Personnel without the prior written consent of the Commission is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

employment. Any Unauthorized Removal may be considered by the Commission to be a material breach of this Contract, in respect of which the Commission may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the Commission, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the Commission as a result of any Unauthorized Removal. Therefore, Contractor and the Commission agree that in the case of any Unauthorized Removal in respect of which the Commission does not elect to exercise its rights under Termination for Cause, Contractor will issue to the Commission the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

- i. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the Commission and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel's removal.
- ii. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the Commission \$833.33 per calendar day for each day of the 30-calendar day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30-calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the Commission that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the Commission's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

1. The Contractor must identify all Key Personnel that will be assigned to this contract in the table below which includes the following: Name and title of staff that will be designated as Key Personnel.
2. Key Personnel years of experience in the current classification.
3. Identify which of the required key personnel positions they are fulfilling.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

4. Key Personnel's roles and responsibilities, as they relate to this RFP, if the Contractor is successful in being awarded the Contract. Descriptions of roles should be functional and not just by title.
5. Identify if each Key Personnel is a direct, subcontract, or contract employee.
6. Identify if each Key Personnel staff member is employed full-time (FT), part-time (PT) or temporary (T), including consultants used for the purpose of providing information for the proposal.
7. List each Key Personnel staff member's length of employment or affiliation with the Contractor's organization.
8. Identify each Key Personnel's percentage of work time devoted to this Contract.
9. Identify where each Key Personnel staff member will be physically located (city and state) during the Contract performance.

<Add more rows below as needed>

1. Name	2. Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract/ Contract	5. % of Work Time	6. Physical Location
James Layton	Four years with Firm Twenty-one years with redistricting	Counsel to redistricting commissions and to the State of Missouri	Direct	As required	St. Louis, Missouri

- A.** The Contractor must provide **detailed, chronological resumes** of all proposed Key Personnel, including a description of their work experience relevant to their purposed role as it relates to the RFP utilizing the required resume template labeled as Appendix A

Qualifications will be measured by education and experience with particular reference to experience on projects similar to that described in the RFP.

Bidder must provide the resumes and information as required above –as an attachment to this RFP labelled as Contractor-Resume.

Attached

4.13 Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

Bidder must provide detailed information as required above – as an attachment to this RFP labelled as Contractor- Org. chart

The work would be done by Mr. Layton, with the possible assistance of Ms. Aigner Carr, as Associate Attorney in the firm, and paralegals and other staff.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

4.14 Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

Bidder must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	None

4.15 Security

The Contractor may be subject to the following security procedures:

- Background Checks

The Commission may require the Contractor's personnel to wear Commission issued identification badges for in person meetings.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must explain any additional security measures in place to ensure the security of the Commission and its facilities: The Firm would maintain as confidential any information and materials provided by or created in relation to the Commission, including restricting access in the Firm's document management system to Mr. Layton and those assisting him.	

5 Project Management

5.10 Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 14 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
The plan is to be responsive to the Commission's requests—which are currently unknown.	

5.11 Meetings

The Contractor must be available to attend all Commission meetings through the contract term either virtually or in person. The Commission will give the vendor as much notice as practical however, in no circumstances less than 18 hours of when they will be required to participate.

The Commission may require attendance at other meetings or events, as it deems appropriate.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

5.12 Reporting

In addition to submitting weekly status reports to the General Counsel of the Commission the Contractor should also identify other reports that would be helpful in accomplishing the Key Deliverables.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
The Firm can provide whatever reports the Commission deems necessary.	

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

6 Pricing

6.10 Price Term

Pricing is firm for the entire length of the Contract.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

6.11 Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The Commission may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the Commission deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):None	

7 Ordering

7.10 Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order.

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

8 Invoice and Payment

8.10 Invoice Requirements

All invoices submitted to the Commission must include: (a) date; (b) delivery order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

8.11 Payment Methods

The Commission will make payment for Contract Activities via EFT to the banking information established in your vendor account within SIGMA-Vendor Self-Service.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

8.12 Procedure

Invoices must be submitted to: Julianne Pastula, the General Counsel of the MICRC for review, approval and forwarding for payment to Suann Hammersmith, the Executive Director of the MICRC.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

9 Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the Commission and it would be impracticable and extremely difficult to fix the actual damage sustained by the Commission. Therefore, if there is late or improper completion of the Contract Activities the Commission is entitled to collect liquidated damages in the amount of \$50,000 and an additional \$1,000 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

<input type="checkbox"/> x	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): None	

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

Proposed Resource Name:	James Layton
Proposed Classification:	<i>Lead counsel</i>
Key Personnel:	Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/>
If resource is associated with a subcontractor provide name of company:	n/a
Percentage of time resource will be allocated to project:	Depends on the extent of the commission's requests.

Required Skills	Bidder's Response
<p>The attorney, firm or other entity must demonstrate experience and expertise in legal and advisory services specific to redistricting and the Voting Rights Act ("VRA") to advise the Commission, its staff, attorneys and consultants.</p> <p>Provide a description of demonstrated expertise and experience with redistricting, reapportionment districting and elections activities and subsequent relevant cases, including the following:</p> <ul style="list-style-type: none"> i) Names of the public entities or private parties represented in redistricting matters, including experience representing public bodies, boards or commissions. ii) The principle legal issues presented in each matter handled by the attorney, law firm or entity. iii) The outcome of the prior redistricting representation. iv) Any relevant published work. v) Specifically address demonstrated experience as it pertains to Section 2 and Section 5 of the Voting Rights Act. 	<p>Does resource have this required skill: Yes x or No <input type="checkbox"/></p> <p>Description of skills and experience:</p> <p>Mr. Layton trained and counseled redistricting commissions after the 2000 and 2010 census. He also handled redistricting litigation for the State of Missouri after the 2010 census. (The State did not have litigation following the 2000 census.) since the mid-1990's he has been extensively involved in election litigation on behalf of the State, and has advised public entity clients about election procedures.</p> <p>The firm has, since its organization, represented hundreds of school districts, as well as community college districts, charter and private schools, public and private colleges and universities, and a wide variety of other entities.</p> <p>Name of project(s) and year(s) experience was obtained:</p> <p>(i)</p> <p>Missouri Senate Redistricting commission, 2001-02.</p> <p>Missouri House Redistricting Commission, 2001-02.</p> <p>Missouri Senate Redistricting Commission, 2011-12.</p> <p>Missouri House Redistricting Commission, 2011-12.</p>

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

	<p>State of Missouri redistricting litigation, 2011-12.</p> <p>(ii) Training and counseling included both federal (constitutional and Voting Rights Act) and state constitution requirements. Litigation included all such requirements, including compactness, contiguity, and Voting Rights Act arguments or claims.</p> <p>(iii)</p> <p>Pearson v. Koster, 359 S.W.3d 35 (Mo. 2012): <i>Reversed judgment on the pleadings because of need for factual inquiry as to compactness.</i></p> <p>Pearson v. Koster, 367 S.W.3d 36 (Mo. 2012): <i>Districts upheld.</i></p> <p>Johnson v. State, 366 S.W.3d 11 (Mo. 2012) <i>Districts upheld</i></p> <p>(iv) None</p> <p>(v) Experience in counseling Missouri commissions, and in defending arguments made in 2011-12 challenges.</p>
<p>Provide a description of demonstrated expertise and experience in advisory and legal services (if any) as it pertains to the Michigan Election Law (Act 116 of 1954), including number of years' experience</p>	<p>Does resource have this required skill: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Although Mr. Layton and other attorneys with the Firm have considerable experience with Missouri election law, they do not have experience in Michigan.</p>

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

REFERENCES

The request for references specifies “within the last three years.” Given that redistricting is done every 10 years, neither Mr. Layton nor the Firm has experience in the last three years. Thus we note the following references for Mr. Layton, based on prior work.

- Ms. Cindy Ormsby, [REDACTED]
 - Ms. Ormsby retained Mr. Layton to assist with the appeal of a Voting Rights Act verdict in 2017.
- Mr. Matt Hesser, State Demographer, OA Budget & Planning, [REDACTED]
[REDACTED]
 - Mr. Hesser was the staff lead for Missouri’s 2011-12 redistricting commissions, and worked with and observed Mr. Layton.
- Mr. Ronald Holliger, Phone: [REDACTED]
 - Mr. Holliger was a member of the judicial redistricting commission in 2011-12 (convened when the citizens commission deadlocked); that commission consulted with Mr. Layton. He was counsel to the Attorney General and observed Mr. Layton’s work with the 2011-12 redistricting commissions and the redistricting litigation challenging commission and legislative redistricting plans.

EDUCATION

Education		
Degree	<i>Juris Doctor (JD)</i>	1982
Program	<i>Law</i>	
University	<i>Brigham Young University, Provo, Utah</i>	

Additional Education		
Degree	<i>BS</i>	1977
Program	Major: Geography	Minor: Political Science
University	<i>Brigham Young University, Provo, Utah</i>	

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

This STANDARD CONTRACT (“**Contract**”) is agreed to between the Michigan Independent Redistricting Commission (the “**Commission**”) and Tueth Keeney Cooper Mohan Jackstadt PC (“**Contractor**”), a Missouri professional corporation. This Contract is effective on [Month, Day, Year] (“**Effective Date**”), and unless terminated, expires on February 28, 2022.

This Contract may be renewed for up to two (2) additional (1) year period(s). Renewal is at the sole discretion of the Commission and will automatically extend the Term of this Contract. The Commission will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the Commission’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the Commission, including the Commission’s staff, attorneys, and consultants, and any third party to achieve the objectives of the Contract; (g) return to the Commission any Commission-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the Commission; (i) assign to the Commission any claims resulting from Commission or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all Commission physical and IT security policies and standards which will be made available upon request; (k) all records created by the Contractor in the performance of the Contract shall be the property of the Commission and subject to applicable records retention laws and protocols; and (l) provide the Commission priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State of Michigan property by wearing identification issued by the State of Michigan, and clearly identify themselves whenever making contact with the State of Michigan or the Commission.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

If to Commission:	If to Contractor:
MICRC c/o Julianne Pastula, General Counsel P.O. Box 30318 Lansing, MI 48909 PastulaJ1@Michigan.gov 517.331.6318	Tueth Keeney Cooper Mohan Jackstadt PC c/o James Layton [REDACTED] St. Louis MO 63105 [REDACTED] [REDACTED]

3. Contract Administrator. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

Commission:	Contractor:
MICRC c/o Julianne Pastula, General Counsel P.O. Box 30318 Lansing, MI 48909 PastulaJ1@Michigan.gov 517.331.6318	James Layton [REDACTED] St. Louis MO 63105 [REDACTED] [REDACTED]

4. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

Commission:	Contractor:
MICRC c/o Julianne Pastula, General Counsel P.O. Box 30318 Lansing, MI 48909 PastulaJ1@Michigan.gov 517.331.6318	James Layton [REDACTED] St. Louis MO 63105 [REDACTED] [REDACTED]

4. Performance Guarantee. Contractor must at all times have financial resources sufficient, in the opinion of the Commission, to ensure performance of the Contract and must provide proof upon request. The Commission may require a performance bond (as specified in Schedule A – Statement of Work) if, in the opinion of the Commission, it will ensure performance of the Contract.

5. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the Commission from

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the Commission; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate Deductible Maximum: \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the Michigan Independent Citizens Redistricting Commission, its officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the Michigan Independent Citizens Redistricting Commission, its officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against the Commission for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the Commission, its officers, staff, attorneys and agents).

10 **Extra Work.** At any time during the term of this Contract, the Commission may request that contractor perform extra work. As used herein, "Extra Work" means any work which is determined by the Commission to be necessary for the proper completion of its redistricting activities but which the parties did not reasonably anticipate would be necessary at the execution of this Contract. Contractor shall not perform, nor be compensated for extra work without written authorization from the Commission's General Counsel that has been formally approved by the Commission.

11 **Reserved**

12 **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the Commission. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the Commission, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

Contractor hereby acknowledges that the Commission is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the Commission, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

13 **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the Commission. Contractor must notify the Commission at least 90 calendar days before the proposed delegation and provide the Commission any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The Commission, in its sole discretion, may require the replacement of any subcontractor.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

- 14 **Staffing.** The Commission's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 15 **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the Commission and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The Commission, in its sole discretion, may also perform background checks.
- 16 **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the Commission. Upon notice to Contractor, the Commission, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the Commission determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 17 **Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the Commission of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.
- In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
- 18 **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 19 **Acceptance.** Contract Activities are subject to inspection and testing by the Commission within 30 calendar days of the Commission's receipt of them ("**Commission Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the Commission, the Commission will notify Contractor by the end of the Commission Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the Commission finds material deficiencies, it may: (i) reject the Contract Activities without performing any

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 22, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the Commission. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the Commission may cancel the order in whole or in part. The Commission, or a third party identified by the Commission, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

20 Reserved

21 Reserved

22 Reserved

23 Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the Commission. All undisputed amounts are payable within 45 days of the Commission's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The Commission is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the Commission's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the Commission under this Contract.

The Commission has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The Commission will notify Contractor of any dispute within a reasonable time. Payment by the Commission will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the Commission constitutes a waiver of all claims by Contractor against the Commission for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The Commission will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the Commission at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the Commission is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the Commission reserves the

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the Commission to Contractor under this Contract.

- 24 **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 25 **Stop Work Order.** The Commission may suspend any or all activities under the Contract at any time. The Commission will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 7 calendar days, or any longer period agreed to by Contractor, the Commission will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The Commission will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 26 **Termination for Cause.** The Commission may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the Commission: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the Commission to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- If the Commission terminates this Contract under this Section, the Commission will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.
- The Commission will only pay for amounts due to Contractor for Contract Activities accepted by the Commission on or before the date of termination, subject to the Commission's right to set off any amounts owed by the Contractor for the Commission's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the Commission in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the Commission incurs to procure the Contract Activities from other sources.
- 27 **Termination for Convenience.** The Commission may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the Commission terminates this Contract for convenience, the Commission will pay all reasonable costs, as determined by the Commission, for Commission approved Transition Responsibilities.
- 28 **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the Commission (not to exceed **30** calendar days), provide all reasonable transition assistance requested by the Commission, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

adverse effect, and to facilitate the orderly transfer of such Contract Activities to the Commission or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, records, reports and other documentation, to the Commission or the Commission's designee; (c) taking all necessary and appropriate steps, or such other action as the Commission may direct, to preserve, maintain, protect, or return to the Commission all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the Commission; (d) transferring title in and delivering to the Commission, at the Commission's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the Commission and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 29 **General Indemnification.** Contractor must defend, indemnify and hold the Commission, its agents, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The Commission will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the Commission, demonstrate its financial ability to carry out these obligations.

The Commission is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the Commission deems necessary. Contractor will not, without the Commission's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any Commission employee, official, or law may be involved or challenged, the Commission may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the Commission, or any of its subdivisions under this Section, must be coordinated with the General Counsel of the Commission. An attorney designated to represent the Commission may not do so until approved by the Commission.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

- 30 **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the Commission the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the Commission with appropriate credits to the Commission against Contractor's charges and reimburse the Commission for any losses or costs incurred as a consequence of the Commission ceasing its use and returning it.
- 31 **Limitation of Liability and Disclaimer of Damages.** IN NO EVENT WILL THE COMMISSION'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The Commission is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 32 **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the Commission and its General Counsel within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 33 **Commission Data.** All data and information provided to Contractor by or on behalf of the Commission, and all data and information derived therefrom, is the exclusive property of the Commission ("**Commission Data**"); this definition is to be construed as broadly as possible and specifically includes all records created by Contractor in the course of implementing this Contract. Commission data shall not be destroyed by Contractor. Upon request, Contractor must provide to the Commission, or a third party designated by the Commission, all Commission Data within 10 calendar days of the request and in the format requested by the Commission. Contractor will assume all costs incurred in compiling and supplying Commission Data. No Commission Data may be used for any marketing purposes.
- 34 **Reserved**
- 35 **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- 35.10 **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, Commission Data is deemed to be Confidential Information.

- 35.11 **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the Commission's Confidential Information in confidence. At the Commission's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- 35.12 **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 35.13 **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the Commission, at the sole election of the Commission, the immediate termination, without liability to the Commission, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

35.14 **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return Commission Data to the Commission following the timeframe and procedure described further in this Contract. Should Contractor or the Commission determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the Commission's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

36 Reserved

37 Reserved

38 Reserved

39 **Records Maintenance, Inspection, Examination, and Audit.** The Commission or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the Commission or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the Commission and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

40 **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the Commission or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the Commission of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the Commission to terminate this Contract under Section 22, Termination for Cause.

- 41 **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence the Commission, any individual Commissioner, or Commission employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the Commission of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 42 **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 43 **Professional Ability of Contractor.** Commission has relied upon the professional training and ability of Contractor to perform the services in this Contract as a material inducement to enter into this Contract. Contractor shall provide properly skilled professional and technical personnel to perform all services under this Contract. All work by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.
- 44 **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 45 **Unfair Labor Practice.** Under MCL 423.324, the Commission may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

- 46 **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 47 **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the Commission or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 48 **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the Commission may immediately contract with a third party.
- 49 **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the Commission's right to terminate the Contract.
- 50 **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written Commission approval, and then only in accordance with the explicit written instructions of the Commission.
- 51 **Website Incorporation.** The Commission is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 52 **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of

SCHEDULE A- STATEMENT OF WORK CONTRACT ACTIVITIES

Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE COMMISSION FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE COMMISSION, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 53 **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 54 **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 55 **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

Contract Modification. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended



TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

JAMES R. LAYTON

Direct Dial: [REDACTED]
Direct Facsimile: 314.880.3601
jlayton@tuethkeeney.com

PLEASE REPLY TO MISSOURI OFFICE

March 16, 2021

Michigan Independent Citizens Redistricting Commission
P.O. Box 30318
Lansing, MI 48909

Re: *Voting Rights Act Legal Counsel*
Request for Proposal No. 920, 210000001155

To Whom it May Concern:

As required by the request for proposals, the undersigned states his commitment to work for the offeror, Tueth Keeney Cooper Mohan & Jackstadt, P.C. on the Voting Rights Act project for the Michigan Independent Citizens Redistricting Commission, contingent on award of the bid.

Sincerely,

[REDACTED]

James R. Layton

JRL/nmr



James R. Layton

ATTORNEY AT LAW

Practice Areas

Appellate Practice
Higher Education
Missouri Education
Labor & Employment
Commercial Litigation

Contact Information

Telephone: (314) 880.3600

Direct Dial: [REDACTED]

Facsimile: (314) 880.3601

E-mail:

jlayton@tuethkeeney.com

34 N. Meramec Avenue,
Suite 600
St. Louis, Missouri 63105

DIFFERENT
BY DESIGN™

Jim Layton joined the firm in 2017 after serving more than 22 years in the Missouri Attorney General's Office—nearly all of those as the State's principal civil appellate lawyer, Solicitor General.

Jim practices in both appellate and trial courts, particularly in matters involving complex legal questions, including those arising under the U.S. and Missouri constitutions, Missouri school funding and other education statutes, discrimination laws, and [Missouri tax laws](#). He represents both private and public entities.

In addition to handling cases at Tueth Keeney, Jim assists clients, in-house counsel, and counsel at other firms with appellate strategy, motions, briefing, and argument. In doing so, he relies on many years of intense appellate experience: Jim has argued more than 90 times before the Missouri Supreme Court, four times before the U.S. Supreme Court, and more than 100 times in other state and federal appellate courts. Since joining Tueth Keeney, Jim has been retained repeatedly to assist with applications to transfer appeals to the Missouri Supreme Court.

Jim's experience in working with high-level government officials and state boards and commissions gives him special insight into government and regulatory decision-making. He has been consulted on a wide range of issues relating to Missouri laws regulating public and private entities.

An adjunct professor of law at the University of Missouri for 20 years, Jim is a frequent speaker on appellate practice, legal writing, constitutional law, and issues arising from new appellate decisions.

A long-time leader in the appellate bar, Jim serves as Co-Chair of the Appellate Practice Committee of The Missouri Bar. He was previously Chair of the American Bar Association's Council of Appellate Lawyers, President of the Bar Association of the U.S. Court of Appeals for the Eighth Circuit, and President of the Elwood Thomas American Inn of Court. He serves on task forces for both the American Academy of Appellate Lawyers and the Missouri courts dealing with remote court proceedings and electronic filing.

Education

J.D., Brigham Young University, magna cum laude, 1982

B.S., Brigham Young University, magna cum laude, 1977

Bar Admissions

Missouri Bar
U.S. Supreme Court
U.S. Court of Appeals for the Eighth Circuit
U.S. Court of Appeals for the D.C. Circuit
U.S. Court of Appeals for the Federal Circuit
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Seventh Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. District Court for the Western District of Missouri

Significant Honors and Awards

- Elected Fellow, American Academy of Appellate Lawyers, 2010
- Missouri Bar Foundation Spurgeon Smithson Award for outstanding contributions to the administration of justice, 2010
- University of Missouri-Columbia School of Law Distinguished Non-alumnus, 2010



James R. Layton

ATTORNEY AT LAW

Practice Areas

Appellate Practice
Higher Education
Missouri Education
Labor & Employment
Commercial Litigation

Contact Information

Telephone: (314) 880.3600

Facsimile: (314) 880.3601

E-mail:

jlayton@tuethkeeney.com

34 N. Meramec Avenue,
Suite 600
St. Louis, Missouri 63105

- Missouri Lawyers Weekly Influential Appellate Advocate, 2012

Professional Affiliations

- The Missouri Bar (Civil Practice and Administrative Law Committees)
- American Academy of Appellate Lawyers

Publications and Presentations

- Annual Supplement, APPELLATE PRACTICE, MO. PRACT., Vol. 24 (2005-2020, West).
- "Oral Argument," Chapter 7, APPELLATE COURT PRACTICE (Mo. Bar 2002).
- "Appellate Court Jurisdiction," Chapter 3, EIGHTH CIRCUIT APPELLATE PRACTICE MANUAL (8th ed. 2018 and 9th ed (forthcoming); Minn. Bar CLE).
- "Direct Review of Administrative Agency Decisions", Chapter 17, EIGHTH CIRCUIT APPELLATE PRACTICE MANUAL (3d, 4th, 5th, and 6th eds.; Minn. Bar CLE).
- "Recent changes in Missouri's Appellate Rules," Journal of the Missouri Bar, Sept-Oct 2018.
- "Five Things Missouri Lawyers Should Know About the Missouri Constitution," Missouri Bar Administrative Law Committee, Nov. 2018
- "Contests re Noncontested Cases: Missouri Administrative Law and the MHRA after Tivol and SB43," Missouri Bar Labor and Employment Annual Seminar, Oct. 2018
- "Five Things Judges Should Know About the Missouri Constitution," Missouri Judges Appellate Forum, Columbia MO 2017
- "We Feel Your Pain: Tips on Appellate Practice for Solo or Small Firm Practitioners," Missouri Bar Solo & Small Firm Conference, Osage Beach MO 2017 (with Missouri Supreme Court judges Mary Russell and Zel Fischer)
- "The Leap from e-Filing to e-Briefing," Kansas Bar 2017 Appellate Practice CLE, Topeka KS 2017
- "The Evolving Role of the State Solicitor: Toward the Federal Model?" JOURNAL OF APPELLATE PRACTICE AND PROCESS (Fall 2001).
- "Legal Writing for the iPad Reader" and "Clear Paths to Effective Obfuscation in Legal Writing," Savannah GA, 2017; Las Vegas, NV and Little Rock, AR, 2016; Orlando, FL 2015; Portland OR, 2014.
- "The Missouri Constitution: History, Context, and Content," Missouri Attorney General's Office, Osage Beach, MO 2016.
- "What Weird AI Taught me About Legal Writing," Bar Association of Metropolitan St. Louis, St. Louis, MO, 2015.
- "View from the Podium," Missouri Bar Solo and Small Firm Conference, Osage Beach, MO, 2016.
- "Before the Brief: Issues in Appellate Advocacy," National Association of Attorneys General National Appellate Advocacy Seminar, Washington, DC, 2008, 2009, 2015, 2016.
- "Supreme Court of Missouri Update: Focus on Solo and Small Firm Cases" and "What Weird AI Taught me About Legal Writing," Missouri Bar Solo and Small Firm Conference, Branson, MO, 2015.
- "The Status of the Law Regarding Same-sex Marriage" and "Same-sex Marriage: Practical Issue," Missouri Bar Family Law Conference, Branson, MO, 2015.
- "Same-sex Marriage Cases," Missouri Bar Government Attorneys Committee, Jefferson City, MO, 2015; Missouri Attorney General's Office, Osage Beach, MO 2015.
- "A Tale of Two Attorneys: Appellate Advocacy," Missouri Bar Government Practice Institute, Jefferson City, MO 2015.



James R. Layton

ATTORNEY AT LAW

Practice Areas

Appellate Practice
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Contact Information

Telephone: (314) 880.3600

Facsimile: (314) 880.3601

E-mail:

jlayton@tuethkeeneey.com

34 N. Meramec Avenue,
Suite 600
St. Louis, Missouri 63105

- National Deposition Training, National Attorneys General Research and Teaching Institute, Santa Fe, NM, 2015.
- Trial Training, National Attorneys General Research and Teaching Institute, Boston, MA 2015.
- "Horizontal Federalism: Regulating States," National Association of Attorneys General, Indianapolis IN, 2015.
- Deposition Training, National Attorneys General Research and Teaching Institute, Princeton, NJ 2011.
- Trial Skills Course, Missouri Attorney General's Office, Columbia MO 2011.
- "Clear Paths to Effective Obfuscation in Legal Writing," Mo Dept of Transportation General Counsel's Office, Jefferson City, MO 2011.
- "Ethical Issues in the Day of Social Media," Mo. Bar Young Lawyers' Division, Jefferson City, MO 2011.
- "Writing Successful Writ Petitions and Motions for Extraordinary Relief," Mo. Bar Solo and Small Firm Conference, Osage Beach MO 2011.
- "Discussion on the Constitutional Considerations of Inadequate Court Funding" American Academy of Appellate Lawyers, St. Paul, MN 2011.
- "Nuts And Bolts of Appellate Practice: Effective Motion and Writ Practice," Missouri Bar, St. Louis, Kansas City, and Springfield, 2011.
- "Please, Judge, Keep Reading,:" National Academy of Elder Law Attorneys, Washington DC 2009.
- "History of State Solicitors and Solicitors General" Univ. of Texas Review of Litigation Annual Symposium, Austin, TX 2009.
- "Administrative Medicine: Companies Practicing Medicine," National Association of State Medical Boards, New Orleans, LA 2008.
- "Rule 4.2 and Corporations," Indianapolis, IN, 2008.
- "Annual Supreme Court Review," Missouri Bar teleconference, 2006, 2007, 2008.
- "2007 Changes to the Rules of Professional Conduct," Missouri Attorney General's Office, June 2007.
- "Appellate Practice: Briefs and Beyond," Missouri Attorney General's Office, Sept. 2008.
- "Searching for the Activist Judge: An Appellate Lawyer's Thoughts," J. Reuben Clark Law Society, St. Louis MO 2007.
- "Ethical Issues in Representing the Government," Missouri Bar Government Attorneys Committee, Jefferson City MO 2006.
- "Matching Advocacy to Audience: Differences Between Intermediate Appellate courts and Courts of Law Resort," Appellate Judges Education Institute, Scottsdale AZ 2006.
- "Taming the Monster Record: How to Manage the Voluminous Trial Record on Appeal," Appellate Judges Education Institute, Dallas TX 2006.

Significant Appeals

- *Lin v. Ellis*, No. SC97641 (Mo. 2020). The Missouri Supreme Court held that a Missouri Human Rights Act retaliation claim cannot be based on a request for accommodation of an alleged disability.
- *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, 788 F.3d 779 (8th Cir. 2015) (cert. granted; to be argued April 19, 2017). The Eighth Circuit upheld Missouri's constitutional provision barring the State from giving tax funds to churches.
- *Roper v. Simmons*, 543 U.S. 551 (2005). The Supreme Court upheld a challenge to the application of Missouri's death penalty statute to a defendant who committed murder while under age 18.



James R. Layton

ATTORNEY AT LAW

Practice Areas

Appellate Practice
Higher Education
Missouri Education
Labor & Employment
Commercial Litigation

Contact Information

Telephone: (314) 880.3600
[REDACTED]

Facsimile: (314) 880.3601

E-mail:

jlayton@tuethkeeneey.com

34 N. Meramec Avenue,
Suite 600
St. Louis, Missouri 63105

- Missouri Director of Revenue v. CoBank ACB, 531 U.S. 316 (2001); On remand, Production Credit Assoc. v. Director of Revenue, 43 S.W.3d 311 (Mo. 2001). The U.S. Supreme Court reversed the Missouri Supreme Court's holding that CoBank (formerly the National Bank for Cooperatives), whose establishing statute describes it is a "federal instrumentality," could not be taxed by the State.
- Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000). The Supreme Court upheld Missouri's limits on the size of campaign contributions.
- Southwestern Bell Telephone Company v. Director of Revenue, 454 S.W.3d 871 (Mo. 2015). The Court upheld the Director of Revenue's decision preventing Southwestern Bell from avoiding payment of Missouri's franchise tax by converting its Missouri subsidiary from a corporation to a limited partnership with.
- Conway v. CitiMortgage, Inc., 438 S.W.3d 410 (Mo. 2014) (amicus). The Supreme Court reversed a decision by the Missouri Court of Appeals, Eastern District, that barred use of Missouri's consumer protection law to address deceptive and unfair practices by companies that buy and collect loans.
- State ex rel. Saint Louis Charter School v. State Bd. of Educ., 438 S.W.3d 437 (Mo. Ct. App. W.D. 2014). The Court addressed the manner in which the Department of Elementary and Secondary Education must address financial disputes between a school district and a charter school.
- Public Communications Services, Inc. v. Simmons, 409 S.W.3d 538 (Mo. Ct. App. W.D. 2013). The Court rejected a challenge to the State's contract for inmate telephone service, which included terms asking for innovative proposals by the bidders.
- Schweich v. Nixon, 408 S.W.3d 769 (Mo. 2013). The court upheld the authority of Missouri governors to restrict the use of appropriations in light of cashflow during a fiscal year.
- Breitenfeld v. School Dist. of Clayton, 399 S.W.3d 816 (Mo. 2013). The court rejected a claim that Missouri's school transfer law, which applies to students in unaccredited districts, violates the "Hancock Amendment" as an "unfunded mandate" on school districts.
- Southern Wine & Spirits of Am., Inc. v. Div. of Alcohol & Tobacco Control, 731 F.3d 799 (8th Cir. 2013). The Court upheld Missouri's bar on liquor wholesalers operating in Missouri without Missouri-resident owners and managers.
- Degraffenreid v. State Bd. of Mediation, 379 S.W.3d 171 (Mo. Ct. App. W.D. 2012). The Court upheld an election through which a union was certified to represent personal care attendants.
- Wright-Jones v. Nasheed, 368 S.W.3d 157 (Mo. 2012); Gray v. Taylor, 368 S.W.3d 154 (Mo. 2012). Court upheld the ability of candidates for the Missouri House, immediately after redistricting that follows a decennial census, to run in districts that contain part of their former districts.
- Manzara v. State, 343 S.W.3d 656 (Mo. 2011). The Court upheld Missouri's "land assemblage tax credit law."
- State v. Nationwide Life Ins. Co., 340 S.W.3d 161 (Mo. Ct. App. W.D. 2011). The Court reversed a decision with regard to actions taken by an insurance company that administrated a state employee annuity plan, alleging breach of contract. The result was the return of more than \$18 million, plus interest, from the company to the employees' retirement accounts.
- School Dist. of Kan. City v. State Of Mo., 317 S.W.3d 599 (Mo., 2010). The Court upheld Missouri's charter school statute against a challenge from one of the two districts, based on the Hancock Amendment's bar on imposing new obligations on local government without a state appropriation.



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Commercial Litigation

Contact Information

Telephone: (314) 880.3600
[REDACTED]

Facsimile: (314) 880.3601

E-mail:

jlayton@tuethkeeney.com

34 N. Meramec Avenue,
Suite 600
St. Louis, Missouri 63105

- *Committee for Educational Equality v. State*, 294 S.W.3d 477 (Mo. 2009). The Court rejected a constitutional challenge to Missouri’s “foundation formula” – the formula used to allocate state funds to local school districts.
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