

CONSULTANT: Kaplan Kirsch & Rockwell LLP  
CONTACT PERSON: Peter J. Kirsch  
ADDRESS: 1675 Broadway Ste 2300  
Denver, CO 80202  
TELEPHONE/FAX NUMBER: 303-825-7000/303-825-7005  
COUNTY DEPT: Snohomish County Airport  
DEPT. CONTACT PERSON: Arif Ghouse  
TELEPHONE/FAX NUMBER: 425-388-5100/425-388-5108  
PROJECT: On Call Legal Services Re: Aviation  
AMOUNT: Not To Exceed \$25,000  
FUND SOURCE: 410-5216804101  
CONTRACT DURATION: Immediately through discharge  
of professional services or 12/31/2024

### AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT (the “Agreement”) is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”) and KAPLAN KIRSCH & ROCKWELL LLP Attorneys at Law (the “Attorney”). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to retain the services of Attorney with regard to federal aviation and airport law and regulation. It is specifically understood by the parties that the services of Attorney will be provided by Peter Kirsch, except as stated in Section 5, where Attorney is authorized to delegate services to partners and associate attorneys. Attorney represents that he is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

2. Term of Agreement; Time of Performance. This Agreement shall govern services from January 1, 2021 and shall continue, unless terminated, until Attorney has fully discharged its professional responsibilities to County, or to December 31, 2024, whichever is later, PROVIDED, that the term of this Agreement may be extended or renewed for two additional terms at the sole discretion of the County by written notice to Attorney; PROVIDED, HOWEVER, that the County’s obligations after December 31, 2021 are contingent upon local legislative appropriation of funds for this specific purpose in accordance with the County Charter and applicable law.

3. Compensation.

a. Services. The County will pay Attorney for legal services provided by Peter Kirsch under this Agreement at an hourly rate of \$475. In the event Mr. Kirsch delegates work to partners, associates or legal assistants the County will pay Attorney for their services at the following hourly rates: partner attorneys \$375-\$475; associate attorneys \$235-\$325; and legal assistants \$150. The County will pay reasonable and necessary out-of-pocket expenses including copying, printing, postage, and other incidental expenses. The County will reimburse Attorney for necessary travel and other out-of-pocket expenses specified herein. Reimbursement for lodging and meals shall not exceed the federal per diem rates established by the U.S. General Services Administration without prior approval by the County. Attorney shall utilize coach airfares and mid-size or lower vehicle rentals unless prior approval is received from the County. PROVIDED, HOWEVER, that in no event shall the total amount charged by Attorney or paid by the County for services during the initial term (excluding extensions or renewals, if any) of this Agreement exceed \$25,000. Time of Attorney spent in travel related to the provision of services under this Agreement shall not be compensated. Time may be recorded and invoiced by Attorney in fractional hours with increments of no less than fifteen (15) minutes.

b. Invoices. Attorney shall submit properly executed invoices to the County no more frequently than monthly. Each invoice shall include an itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date. Each invoice shall also include an itemization of any reimbursable expenses incurred by Attorney during the time period covered by the invoice, together with reasonable documentation substantiating such expenses. Subject to County review and approval of the work performed, the County will pay such invoices within thirty (30) calendar days of receipt.

c. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed \$25,000 for the initial term of this Agreement (excluding extensions or renewals, if any).

4. Appointment as Special Deputy. Peter J. Kirsch has been appointed as a special deputy prosecuting attorney by the Snohomish County Prosecuting Attorney for the limited purpose of providing legal services with regard to federal aviation and airport law and regulation. Appointment as a special deputy shall be at the pleasure of the Prosecuting Attorney and may be revoked at any time. If other lawyers employed by Attorney need to appear in court or other proceedings where a designation of special deputy is necessary, Peter J. Kirsch shall inform the Chief Civil Deputy of the need for such appointment. Additional special deputy appointments shall be at the pleasure of the Prosecuting Attorney and may be revoked at any time.

5. Associate Counsel and Experts. Peter J. Kirsch may delegate services to partner and associate counsel, including Steve Kaplan, or legal assistants employed by Attorney, to assist him in providing legal services under this Agreement in a cost effective manner, provided that associate counsel and legal assistants shall work at the specific direction and subject to the approval of Peter Kirsch.

6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

7. Contacts for Invoices. Attorney invoices shall be addressed to:

Arif Ghouse  
Airport Director  
Snohomish County Airport  
3220 100<sup>th</sup> St SW, Ste A  
Everett, WA 98204-1390

Michelle Corsi  
Prosecuting Attorney's Office  
Deputy Prosecuting Attorney, Civil Division  
3000 Rockefeller, M/S 504  
Everett, WA 98201

8. Ownership of Documents. All reports, plans, memorandums, opinions, pleadings, analyses, data and other documents produced in the performance of this Agreement shall be the property of the County. Copies of any documents prepared in connection with legal services provided under this Agreement shall be provided by Attorney to County upon request.

9. Assignment. Attorney shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement except as provided in this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. Attorney shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by Attorney. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of Attorney which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to Attorney, shall be refunded to the County by Attorney.

11. Indemnification.

a. Professional Liability.

Attorney agrees to indemnify the County and their officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness fees, and other claims-related expenses, arising out of the performance of Attorney's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of Attorney, its principals, employees or associates. Attorney has no obligation to pay for any of the indemnitees' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Attorney's finally determined percentage of liability based upon the comparative fault of Attorney, its principals, employees and associates. For the purpose of this section, County and Attorney agree that County's costs of defense shall be included in the definition of damages above.

b. All Other Liabilities Except Professional Liability.

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, Attorney shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of Attorney. In addition, Attorney shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County by an employee or former employee of Attorney and Attorney, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from Attorney.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

12. Insurance Requirements. Attorney shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by Attorney, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, Attorney warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to Attorney under this Agreement. Attorney shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. Attorney's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Attorney to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. Attorney shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

(ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;

(iv) Employers' Liability or "Stop Gap" coverage: \$500,000 per accident;

(v) Professional Liability: \$ 5,000,000 per claim and \$5,000,000 aggregate with a \$20,000 deductible per claim.

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Attorney in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement must be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) Attorney's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to Attorney's liability to the County and shall be the sole responsibility of Attorney.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, Attorney shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

Attorney shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by Attorney of Attorney's compliance with the requirements of Chapter 2.460 SCC. If Attorney is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect Attorney's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further

assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Compliance with Other Laws. Attorney shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

16. Compliance with Grant Terms and Conditions. Attorney shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds Attorney's work hereunder.

17. Suspension of Work. The County may, at any time, instruct Attorney in writing to stop work effective immediately, or as directed, pending further instructions from the County to resume the work of this Agreement.

18. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If Attorney breaches any of its obligations hereunder, and fails to cure the same within ten (10) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay Attorney only for reasonable services and corresponding reimbursable expenses, if any, accepted by the County.

c. The County may terminate this Agreement upon twenty (20) business days' written notice to Attorney for any reason other than stated in subparagraph b above, in which case payment shall be made for reasonable services and corresponding reimbursable expenses, if any, incurred by Attorney in performing this Agreement prior to receipt of the termination notice.

d. Termination by the County hereunder shall not affect the rights of the County as against Attorney provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 18, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due Attorney (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contactor to complete the work of the Agreement.

19. Notices. All notices and other communications, except invoices sent pursuant to Section 7, shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the **County**:

Arif Ghouse  
Airport Director  
Snohomish County Airport  
3220 100<sup>th</sup> St SW, Ste A  
Everett, WA 98204-1390

and

Michelle Corsi  
Prosecuting Attorney's Office  
Deputy Prosecuting Attorney, Civil Division  
3000 Rockefeller, M/S 504  
Everett, WA 98201

If to Attorney:

Peter J. Kirsch  
Kaplan Kirsch Rockwell LLP  
1675 Broadway, Ste 2300  
Denver, CO 80202

The County or Attorney may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

20. Confidentiality. Attorney shall not disclose, transfer, sell or otherwise release to any third party any confidential information gained by reason of or otherwise in connection with Attorney's performance under this Agreement. Attorney may use such information solely for the purposes necessary to perform its obligations under this Agreement. Attorney shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

21. Attorney Work Product. All work product and documents generated by the Attorney in performance of this contract shall be prepared in relation to the anticipation and preparation of litigation and shall be held confidential by all parties to this Agreement as attorney work product. The Attorney acknowledges that all materials disclosed to him by the County, and the work he performs for the County hereunder, are confidential and proprietary, and the Attorney will abide by all reasonable restrictions placed by the County on the dissemination of such materials.

In the event that the Attorney is served with a subpoena or other legal process requesting the disclosure of such materials or work, the Attorney will promptly advise the County of same and the Attorney will cooperate with all reasonable and lawful requests by the County to prevent the disclosure of confidential and/or proprietary information pursuant to such subpoena or other process. Any and all studies, reports, surveys of data, work papers, or other information prepared by the Attorney in connection with work performed under this Agreement, shall be the property of the County, and Attorney waives any right of lien thereon for payment of services.

22. Warranty. Attorney represents and warrants that the attorney appointed by the Prosecuting Attorney is a member in good standing of his respective State Bar Association, that no disciplinary or regulatory proceedings are pending against him, that all necessary investigations have been made to identify conflicts, and that all conflicts have been disclosed and will continue



to be disclosed to the County.

23. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of Attorney are needed for the County to respond to a request under the Act, as determined by the County, Attorney agrees to make them promptly available to the County. If Attorney considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, Attorney shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by Attorney and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify Attorney (a) of the request and (b) of the date that such information will be released to the requester unless Attorney obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If Attorney fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of Attorney to claim any exemption from disclosure under the Act. The County shall not be liable to Attorney for releasing records not clearly identified by Attorney as confidential or proprietary. The County shall not be liable to Attorney for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

24. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

25. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

26. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

27. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and Attorney. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

