

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: August 17, 2021

Consent       Regular  
 Public Hearing

Department:

Submitted By: County Attorney

Submitted For: County Attorney

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to: approve a Third Amendment to Agreement for Legal Services (“Amendment”) with Kaplan, Kirsch and Rockwell, LLP (“Kaplan”), exercising the second and final renewal period from August 31, 2021 through August 30, 2023 and increasing the not-to exceed contract amount by \$200,000.

**Summary:** On January 10, 2021, the Federal Aviation Administration (“FAA”) issued a Final Agency Decision, finding the jet restriction at the Palm Beach County Park Airport (“Lantana Airport”) is not grandfathered under the Airport Noise and Capacity Act, is unreasonable and unjustly discriminatory, and finding the County to be in violation of its grant assurance obligations. The Board of County Commissioners voted to appeal the FAA’s final determination at its February 9, 2021 meeting. The current Agreement with Kaplan will expire August 31, 2021. This Amendment provides for the exercise of the final renewal option, extending the term of the Agreement by an additional two years to August 30, 2023, and increases the not-to exceed contract amount by \$200,000 for a total not-to exceed amount of \$475,000, which will provide for the continuation of expert aviation legal services. This Amendment also adds the e-verify employment eligibility language. Countywide (AH)

**Background and Policy Issues:** On September 26, 2017, the Board approved an Agreement for Legal Services (R-2017-1405) (“Agreement”) with Kaplan for expert aviation legal services on various legal matters, including the defense of County in a 14 Code of Federal Regulations, Part 16 complaint concerning jet restrictions at the Lantana Airport, the current appeal of the FAA’s Final Agency Decision and other related legal matters. This amendment will extend the agreement an additional two years, to August 30, 2023, and increases the not-to exceed contract amount by \$200,000 for a total not-to exceed amount of \$475,000.

**Attachments:**

1. Third Amendment (3)
2. Budget Availability Statement

Recommended By: *DMN Remain*      6/17/21  
County Attorney      Date

Approved By: \_\_\_\_\_  
N/A

**II. FISCAL IMPACT ANALYSIS**

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$200,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$200,000</u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_

Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

Budget Account No.: Fund 4100 Department 120 Unit 1110 Object 3125

Reporting Category \_\_\_\_\_

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: \_\_\_\_\_

**III. REVIEW COMMENTS**

A. OFMB Fiscal and/or Contract Development and Control Comments:

Lucy Martin 6/21/21 OFMB 6/17/21 8/18/21 7/16/21  
 Contract Development and Control

B. Legal Sufficiency:

Anne Delaney 7/7/21  
 Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

**THIRD AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY  
AND KAPLAN, KIRSCH AND ROCKWELL LLP  
FOR LEGAL SERVICES**

**THIS THIRD AMENDMENT**, dated \_\_\_\_\_, 2021, to Agreement for Legal Services ("Amendment") is made by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the "County", and Kaplan, Kirsch and Rockwell LLP, hereinafter referred to as "Attorney".

**WITNESSETH:**

**WHEREAS**, the parties entered into that certain Agreement for Legal Services dated September 26, 2017 (R-2017-1405)("Agreement"); and

**WHEREAS**, the parties entered into a First Amendment on February 6, 2018 amending the start date of the Agreement to August 31, 2017; and

**WHEREAS**, the parties entered into a Second Amendment on July 2, 2019, exercising its first option for renewal, which increased the not-to exceed agreement amount by \$200,000 and updated the non-discrimination language; and

**WHEREAS**, the parties desire to amend the Agreement by exercising its second and final option for renewal for the period August 31, 2021, through August 30, 2023; and

**WHEREAS**, the parties desire to increase the not-to-exceed amount of the Agreement by \$200,000; and

**WHEREAS**, the parties desire to add Section 27 to the Agreement by adding e-verify employment eligibility language.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements expressed herein, the County and Attorney agree as follows:

1. Section 4(a), first sentence of the Agreement is hereby deleted and replaced with the following sentence:

"County shall pay Attorney for Legal Services rendered on a per hour basis as set forth in Exhibit "A", attached hereto and incorporated herein by reference, a total amount not-to-exceed is Four Hundred and Seventy-Five Thousand Dollars (\$475,000)."

2. Section 26 of the Agreement is hereby deleted in its entirety and replaced with the following:

“This Agreement shall be effective upon execution by the Palm Beach County Board of County Commissioners and shall apply to Legal Services performed after August 31, 2017, and shall continue until August 30, 2023, with no renewal options remaining.”

3. Section 27 of the Agreement is hereby added as follows:

“Attorney warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of subcontractor’s performing the duties and obligations of this Agreement are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Attorney shall obtain from each of its subcontractor’s an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Attorney shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that Attorney has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Attorney’s subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, County shall notify Attorney to terminate its contract with the subcontractor and Attorney shall immediately terminate its contract with the subcontractor. If County terminates this Agreement pursuant to the above, Attorney shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, Attorney shall also be liable for any additional costs incurred by County as a result of the termination.”

4. Except as modified herein, all terms and conditions of the Agreement, as amended shall remain in full force and effect.

5. This Third Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners.

In witness whereof, the parties hereto have duly executed this Third Amendment on the day and year first above written.

**ATTEST:**  
**JOSEPH ABRUZZO**  
**CLERK OF THE CIRCUIT COURT**  
**& COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA BY ITS**  
**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Dave Kerner, Mayor

**APPROVED AS TO FORM &**  
**LEGAL SUFFICENCY**


  
Assistant County Attorney

**Witness**

**Attorney:**

By:   
\_\_\_\_\_  
Signature

**Kaplan, Kirsch & Rockwell LLP**

By:   
\_\_\_\_\_  
Signature


  
\_\_\_\_\_  
Peter Kirsch, Esq.

Exhibit A

Peter Kirsch	\$450.00
John Putnam	\$400.00
W. Eric Pilsk	\$400.00
Associates	\$275 – 300.00
Law Clerks	\$125.00

**Budget Availability Statement**  
**Department of Airports**

**DATE:** June 18, 2021

**TO:** Anne Helfant  
Assistant County Attorney III

**FROM:** Debbie Duncanson  
Director of Airport Finance & Administration

**RE:** Third Amendment of Agreement for Legal Services with  
Kaplan, Kirsch and Rockwell

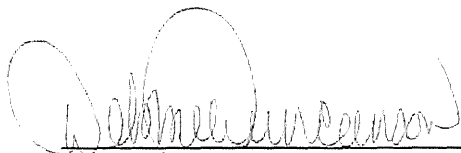
**SOURCE OF FUNDING: (Check all that apply)**

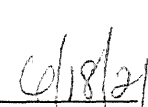
- FAA Grant No.:
- FDOT Grant No.:
- PFC Application No.:
- Airport Revenues/Local Funds
- Other: \_\_\_\_\_

Please be advised that funds are available in the amount of \$ 200,000 in account #

FUND: 4100 DEPT: 120 UNIT: 1110 OBJ: 3125 SUBOBJ: \_\_\_\_\_ for Third

Amendment of Agreement for Legal Services with Kaplan, Kirsch and Rockwell, LLP.

  
Debbie Duncanson

  
(Dated)