

**2024 INTERLOCAL AGREEMENT FOR
LEGAL SERVICES CONCERNING THE DIVERSION OF AVIATION FUEL TAX**

This Interlocal Agreement (the "Agreement") is made and entered between the following municipal and county governments and airport sponsors, as evidenced by its signature below. Each shall be referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes public agencies to execute agreements on the basis of mutual advantage to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties to this Agreement are public agencies as defined by Chapter 39.34 RCW which seek to work cooperatively on the project described below on the basis of mutual advantage and efficiencies for the benefit of their respective jurisdictions; and

WHEREAS, under current Federal law and regulations, diversion of certain airport revenues from aviation fuel sales for non-aeronautical purposes is prohibited. The relevant FAA grant assurance provides, in pertinent part, that "[a]ll revenues generated by the airport and any local taxes on aviation fuel...will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned or operated by the owner or operator of the airport, and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport;" and

WHEREAS, grant assurances apply to airport sponsors, which are the owners or operator of the airports. Violation of assurances may result in an FAA administrative action or FAA initiated federal civil lawsuit against the airport sponsor; and

WHEREAS, Washington state has authorized cities and counties to collect and use tax on aviation fuel sales at FAA-grant assurance airports. Moreover, the Department of Revenue ("DOR") collects a hazardous substance tax ("HST") and petroleum products tax ("PPT") on the sale of aviation fuel at FAA-grant assurance airports; and

WHEREAS, Washington state possesses no data on the actual amount of local sales/use tax, HST, and PPT collected specifically on aviation fuel. The state concedes that obtaining this data would be "expensive and administratively burdensome," and the revenue is estimated to be in the tens of millions of dollars; and

WHEREAS, past efforts at bringing the state into compliance have been unsuccessful and effective regulatory remedies are lacking. Meanwhile, the relevant statute of limitations to recover diverted funds precludes the recovery of millions of dollars each year; and

WHEREAS, the Parties are joining together to explore legal and all other avenues available to bring the state into compliance; and

WHEREAS, the Chelan Douglas Regional Port Authority (“CDRPA”) has offered to serve as the lead agency by entering into a contract for legal services to evaluate and consider a range of options to prevent the diversion of aviation fuel tax for non-aeronautical purposes; and

WHEREAS, the estimated cost of the pre-litigation legal inquiry is \$125,000.00; and

WHEREAS, the Parties have determined that it would be in the public’s and each Party’s best interest to enter into an agreement for the sharing of costs for this effort so that the diverted funds may be used as contemplated by the FAA grant assurances; and

WHEREAS, the Parties and their counsel recognize that the Parties have common legal interests in evaluating and litigating issues raised in this matter;

NOW THEREFORE, the Parties, for and in consideration of the mutual covenants herein contained, hereby agree as follows:

AGREEMENT

1. **Purpose and Objectives.** It is the purpose of this Agreement to have the Parties collectively pay for the legal services (“Legal Services”) to represent the Parties’ interests in pre-litigation challenges to Washington state’s diversion of aviation fuel tax.

2. **Effective Date, Term, and Termination.**
 - a. The “Effective Date” of this Agreement shall be the day upon which the signing Party has executed this Agreement.

 - b. The “Term” of this Agreement shall begin on the Effective Date and end upon completion of the legal services contemplated herein, unless extended by written agreement of the Parties.

 - c. So long as the cost of Legal Services is covered by the Parties, this Agreement may be terminated prior to the end of the Term only upon agreement of all Parties and subject to Paragraph 4, below. In such an event, the Parties will agree on a reasonable termination date.

3. **Administration.**
 - a. The CDRPA shall contract with Legal Services to perform the following tasks:
 - i. To develop a legal framework memorandum that will evaluate and consider various legal theories and provide a solid foundation upon which future legal action may rely.

 - ii. Meet with appropriate parties, including Airport Sponsors and the FAA, and consider procedural issues for executing the Parties’ strategy.

- iii. If the Parties elect to litigate, prepare the necessary pleadings, and select the appropriate venue for legal action.
 - iv. Engage in preliminary settlement negotiations with the DOR and the Attorney General's Office, if appropriate.
 - v. If preliminary settlement negotiations are unsuccessful, file suit and pursue the matter through final judgment, settlement, or compliance.
- b. The CDRPA will provide periodic reports to the Parties on the status of the Legal Services and solicit input on strategies and other matters related to the Legal Services.

4. Cost and Payment.

- a. The CDRPA will engage Legal Services to perform pre-litigation tasks, as outlined in Paragraph 3(a)(i) through (iv), above, which will cost an estimated \$125,000.00. The CDRPA proposes to share in the total cost as set forth in Exhibit A (Aviation Fuel Tax—Funding Support). The Parties shall not be obligated to provide the proposed amount in Exhibit A.
- b. It is anticipated that private organizations and/or associations may provide additional funding support for Legal Services contemplated herein but in no event will such entity be considered a Party for purposes of this Agreement.
- c. The CDRPA shall be responsible for making payments to Legal Services upon the contract terms from the funds received pursuant to Paragraph 4(a).
- d. All money received by the CDRPA shall be kept in a separate, non interest-bearing account until such time payments to Legal Services are due. At all times, the CDRPA shall provide the Parties periodic updates on the work product from Legal Services as well as an accounting of revenue received, and expenses paid.
- e. Should the pre-litigation costs be less than the estimate, or should the Parties resolve this dispute with surplus funds, the Parties may be refunded their pro-rata share.
- f. Should costs for Legal Services exceed the estimate, the Parties may be asked—but will not be obligated—to contribute additional sums.

5. Maintenance and Audit of Records.

- a. Each Party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement.

- b. These records shall be subject to inspection, review and audit by any party, the Washington State Auditor's Office, or any other entity as required by law. Nothing in this Agreement shall be construed to require a Party to disclose any privileged or work-product documents or information to the other Parties, which a Party, in its sole discretion, shall determine not to disclose.
- c. Each Party shall retain all such books, records, documents, and other materials for the longest applicable retention period under federal and Washington state law.

6. Legal Relations.

- a. The Parties are separate and independent governmental entities in all respects. Nothing in this Agreement shall be construed as creating any other relationship.
- b. Each Party agrees to defend, indemnify, and hold harmless the other Parties and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney's fees and costs and expenses, arising out of or from its performance of this Agreement, except for injuries and damages caused by the actions of the entity being indemnified.
- c. Nothing in this Agreement shall be construed to permit anyone other than the Parties and their successors to rely upon the covenants and agreements contained in this Agreement, nor to give any such third party a cause of action, as a third-party beneficiary or otherwise, on account of any nonperformance of the provisions of this Agreement.
- d. No Party will have the power or authority to bind the others or incur any obligations on the others' behalf without each party's prior written consent.
- e. Any sharing of documents, things, and other information between or among that Parties and counsel for the Parties is intended to be in furtherance of the common legal interests described herein, and with the intention, expectation and understanding that they will be kept confidential and privileged, as applicable, under the terms of this Agreement.

7. Miscellaneous Provisions.

- a. Any notice, demand, or communication required or permitted under this Agreement shall be addressed to the respective Representative and deemed to have been duly given (i) on the date of delivery if delivered by courier, (ii) three business days after posting a postage pre-paid first class letter addressed to the mailing address of the Party, or (iii) upon confirmation by the intended recipient of the receipt of email addressed to the Party to whom directed at the relevant Party's email address specified below its signature.
- b. Pursuant to RCW 39.34.030 it is acknowledged that:

- i. This Agreement shall not be construed to create any entity.
 - ii. The CDRPA shall be the Administrator of this Agreement.
 - iii. No property--real, personal, or intangible--shall be acquired by the Parties collectively or individually pursuant to this Agreement.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any action to enforce the terms and conditions of this Agreement shall be brought either in Chelan County, Washington or in the county wherein the Party that is the subject of the enforcement action is located.
- d. This Agreement may not be amended except by the unanimous written agreement of all the Parties.
- e. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
- f. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.
- g. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- h. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- i. All covenants, promises and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.
- j. Each of the provisions of this Agreement has been reviewed, negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
- k. This Agreement is not assignable absent written approval by all Parties, which approval shall be granted, withheld, or conditioned in the discretion of each party. Each of the covenants, terms, provisions, and agreements herein contained shall be binding upon and

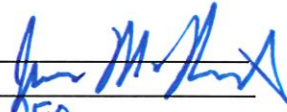
inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors, and assigns.

- l. This Agreement is not for the benefit of any individual or entity other than the Parties and shall not be enforceable thereby under any circumstances whatsoever.

- m. This Agreement may be executed by the Parties hereto in counterparts and once so signed by all Parties and posted to each Party's web site in accordance with RCW 39.34, shall have full force and effect. PDF copies of relevant signature pages or electronic signatures shall be treated as originals. Each of the undersigned warrant that they have authority to execute this Agreement.

- n. The entire Agreement (including the recitals and the amendments) between the Parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

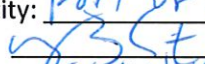
CHELAN DOUGLAS REGIONAL PORT AUTHORITY

By: 
Its: CEO
Email: jim@cdma.org

Entity _____
By: _____
Its: _____
Email: _____

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Its: _____
Email: _____

Entity _____
By: _____
Its: _____
Email: _____

Entity: Part of Shelton
By:  Wendy E. Smith
Its: Executive Director
Email: wendyse@portofshelton.com

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