

MEMORANDUM

TO: Board of Education

FROM: Taw Lindsey
Superintendent of Schools

RE: ACTION ITEM

Date: January 21,2025

Status: Seeking Board approval to enter into a contract NCE Council PLLC for legal services regarding the District's radio station, KYMR for an annual membership fee of \$1,199.88.

Option 1: The Board may choose to approve the above action item as listed.

Option 2: The Board may choose to *not* approve the above action item as listed.

Recommendation: The Superintendent recommends the Board to approve the above action item as listed.

Issue Summary:

Our attorney, Dwayne Sam, for FCC compliance to support the KYMR radio station has changed firms. He is familiar with our station and the required reporting and compliance issues associated with running a non-commercial radio station in a school. The new agreement will reduce our costs, provide on-going consultation with the attorney, and ensure all FCC compliance issues are addressed.



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**PRIVILEGED & CONFIDENTIAL
VIA EMAIL ONLY**

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Superintendent
Annette Islands School District
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89A 4th Ave
Metlakatla, AK 99926
Office: 907.886.6332
Fax: 907.886.5130
Email: tlindsey@aisdk12.org

January 9, 2025

Re: Engagement Letter & Membership Agreement

Dear Mr. Lindsey:

Thank you for choosing NCE Counsel PLLC (“NCE Counsel”, the “Firm”, or “We”) to provide monthly subscription legal services through our Mission Advisor membership plan (“Mission Advisor” or the “Plan”). We are excited to embark on this innovative approach to legal services with you.

At NCE Counsel, we are committed to zealously pursuing efficiency and cost-effective solutions that align with our members’ missions. This membership model reflects our dedication to reimagining how legal services can be delivered in a more client-centered manner. By providing predictable costs, priority access, and a range of essential legal services, we aim to be a true partner in your success, allowing you to focus on your core business while having peace of mind about your legal needs.

Mission Advisor is designed to offer you expert legal guidance, tailored to the unique needs of noncommercial broadcasters, without the unpredictability of traditional hourly billing. This approach embodies our belief that legal services should be accessible, transparent, and aligned with your organizational goals. The attorney-client relationship will be established upon execution of this Membership Agreement (“Agreement”) and payment of the monthly or annual membership fee, and will be governed by the following terms and conditions:

1. Client Identification

For the purposes of this Agreement, the client is exclusively defined as Annette Islands School District (“Client”). This representation does not extend to Client’s individual shareholders, members, directors, officers, or employees. NCE Counsel’s professional duties and obligations are owed solely to Client, and these individuals should seek separate legal counsel for any personal legal matters or for any matters where their interests may diverge from those of Client.

2. Scope of Services

Client has selected the Mission Advisor plan, which includes the following benefits (“Scope of Services”):

- 50% Discount on Standard Hourly Rate: Client receives a 50% discount on Firm’s standard hourly rate of \$799 for any services not covered by the Plan.
- 15-Minute Monthly Zoom Consultation: Upon request with 48 hours’ notice, Client is entitled to a monthly 15-minute consultation via Zoom to discuss any legal matter(s). Unused consultation time does not roll over to subsequent months. Any consultation time exceeding 15 minutes may be billed at Firm’s discounted hourly rate.
- Priority Calendar Access and Scheduling: Client will be given access to the Firm’s calendar and may schedule Zoom conferences on demand with 48 hours’ notice, choosing a convenient date and time based on availability.
- Annual EEO Public File Report - Review and Filing: Firm will review, edit, and file Client’s annual Equal Employment Opportunity (“EEO”) Public File Report.
- EEO Audit Response – Draft and Filing (if submitting annual payment): If Client is selected for an EEO audit, Firm will draft and file the response (*available for annual subscribers only*).
- Unlimited Administrative Update Filings: Firm will file any necessary administrative updates with the Federal Communications Commission (“FCC”) on Client’s behalf, with no limit on the number of filings.
- Annual Online Public Inspection File and Website Audit: Once per year, Firm will conduct a comprehensive audit of the Client’s Online Public Inspection File (“OPIF”) and website for compliance. Firm will provide a written report with findings and recommendations.
- Unlimited STA Filings: Firm will file any necessary Special Temporary Authority (“STA”) requests, including extension requests and resumption/restoration notifications.
- Quarterly Issues/Programs List - Review and Filing: Firm will review and file Client’s Quarterly Issues/Programs List to ensure compliance with FCC regulations. This benefit is limited to reports due within the 12-month membership period only. Review and filing of any delinquent reports from previous years will be billed at the Firm’s discounted hourly rate of \$399.
- Form One EAS – Draft & Filing: Firm will draft and file the annual Emergency Alert System Form One on Client’s behalf.
- Biennial Ownership Report – Draft and Filing: Firm will draft and file Client’s Biennial Ownership Report with the FCC.
- Monthly Advisories, Updates and/or Guidance: Client will receive monthly communications providing relevant legal updates, advisories, or guidance pertinent to their operations.
- FCC Compliance Deadline Reminders: Firm will provide timely reminders for upcoming FCC compliance deadlines specifically related to the services offered within the Scope of Services.

Mission Advisor is designed to cover routine compliance matters and provide ongoing legal support. The services listed above constitute the complete Scope of Services covered by the Plan. Any services not explicitly mentioned in this section are not included in the Plan and may be subject to additional fees at the Firm's discounted hourly rate of \$399, unless otherwise agreed in writing. If Client requires services outside this scope, Client should discuss with Firm to determine the best course of action, including exploring other membership plans that may better suit Client's needs and provide even greater value.

To provide the Scope of Services indicated above, the Firm relies on Client to provide complete and accurate information regarding the legal matter and for Client to be an active participant during the engagement. When the Firm provides services to Client, Client acknowledges that the Firm has relied upon Client to supply Firm with the facts upon which the Firm provides counsel to Client. In addition, Client acknowledges that the Firm has relied upon Client to review all legal documents that Firm prepares for factual accuracy and completeness.

3. Term and Renewal

The Mission Advisor membership plan requires a 12-month membership commitment. The term of this Agreement will commence and become effective on the date of execution by Client (the "Effective Date").

Upon completion of the initial 12-month term, this Agreement will automatically renew for successive 12-month periods on the anniversary of the Effective Date, unless either Client or Firm provides written notice of termination prior to the end of the current term.

Client acknowledges that by signing this Agreement, Client is committing to a minimum 12-month term of services. Early termination may result in additional fees as outlined in the Termination section of this Agreement.

Firm reserves the right to modify the terms, including pricing, of the Plan upon renewal. Any such modifications will be communicated to Client in writing at least 30 days prior to the renewal date.

4. Fee Structure and Earning of Fees:

Client agrees to pay a membership fee of \$99.99 per month for legal services. The total annual subscription cost is \$1,199.88. Fees are earned at Firm's membership rate of \$399 per hour, billed in quarter-hour increments (.25 hours), as Firm provides services under this Agreement. While the Firm does not typically provide monthly itemized invoices for services within the Scope of Services, the Firm maintains internal records of time spent and services provided. These records are used to:

- a. calculate any refunds due in the event of early termination;
- b. prepare itemized invoices if services are performed outside the Scope of Services; and
- c. respond to specific client requests for documentation of services rendered.

5. Handling of Funds

Unless otherwise agreed, NCE Counsel must hold membership fee(s) in escrow until earned through the provision of legal services. By signing this Agreement, Client gives informed consent for Firm to deposit and hold membership fees in Firm's operating account rather than in a client trust account. Client has been advised verbally and in writing, and understands, that these fees will be treated as Firm property upon receipt. Client further understands and acknowledges that:

- a. The Firm can keep these fees only by providing the benefits and services outlined in this Agreement; and
- b. If Client terminates this Agreement, Firm will refund any portion of advance fees that are unreasonable or unearned.

6. Termination and Refunds:

Client has the right to terminate this agreement and discharge the Firm at any time, with or without cause, subject to liability for payment for the Firm's services.

If Client terminates this agreement before the end of the 12-month term, NCE Counsel will calculate fees earned at the Firm's regular hourly rate of \$799 for all services provided through the date of termination. Client will be responsible for paying any difference between fees earned at Firm's regular hourly rate and the subscription fees paid to date. Any unearned portion of advance membership fees will be refunded to Client.

The Firm reserves the right to terminate representation for any reason consistent with the District of Columbia's Rules of Professional Conduct, including, but not limited to:

- a. Non-payment of fees and expenses;
- b. Client insisting the Firm engage in illegal or unethical activity;
- c. Client's failure to follow the Firm's advice or instructions;
- d. Client's failure to abide by the terms of this Agreement; and
- e. Any other reason permitted by the Rules of Professional Conduct.

Termination due to Client's breach: If the Firm terminates representation due to Client's breach of this Agreement (including, but not limited to, reasons a, b, c, or d above), the early termination provision will apply. In such cases, Client will be billed at Firm's regular hourly rate of \$799 for all services provided through the date of termination, less any membership fees already paid. Any unearned portion of advance membership fees will be refunded to Client.

Termination for non-breach reasons: If the Firm exercises its discretion to terminate representation for reasons other than Client's breach, the discounted hourly rate of \$399 will apply to all services rendered through the date of termination. Any unearned portion of advance membership fees will be refunded to Client.

In all cases where Firm terminates this Agreement, We will take reasonable steps to protect Client's interests, such as giving reasonable notice and providing Client with all papers and property to which Client is entitled.

7. Billing and Payment

All membership fees and out-of-scope fee payments are accepted electronically via credit card, ACH, or wire transfer. These payments will be automatically charged to the payment method on file. If Client would like to pay a fee via Bitcoin, please inform Firm, and Client will be provided with a secure wallet address.

8. Costs and Expenses

This Agreement specifically excludes any costs, expenses and/or travel outside of a 20-mile radius of Washington, D.C. related to the delivery of legal services pursuant to this Agreement. Client shall be solely responsible for those costs and expenses and will pay the costs and expenses as they arise during the course of this Agreement.

Additionally, at no point during the course of this engagement shall Firm advance the payment of costs or fees for Client. All such costs and fees must be paid by Client directly or reimbursed to Firm promptly upon receipt of an invoice.

9. No Guarantee

Firm agrees to provide conscientious, competent, and diligent services and at all times will seek to provide advice to achieve solutions which are just and reasonable for Client. However, because of the uncertainty of legal proceedings, the interpretation of and changes in the law, and many unknown factors, Firm cannot and does not warrant, predict, or guarantee results or the final outcomes of any transaction, application, or other legal matter.

10. Expert Services and Fees

~~From time to time, after obtaining Client's advance consent, Firm may engage various experts on Client's behalf in the course of representing Client. This may include other attorneys with legal specialties outside of Firm's core areas of practice or states admitted to practice. By Firm engaging outside experts on Client's behalf, the arrangement may protect the services performed by the experts under the attorney work-product doctrine. However, should Firm engage an expert, Client will rely solely on the expert's advice and will remain solely responsible for payment of the expert's fees and expenses.~~

Client acknowledges that any fees for expert services are separate from and in addition to the membership fee. Firm will provide Client with an estimate of expert fees before engaging any expert services, and Client agrees to pay these fees directly to the expert or reimburse Firm promptly upon receipt of an invoice.

11. Staffing and Matter Management

NCE Counsel, in its discretion and without Client's consent, may utilize experienced attorneys, paralegals, or others to assist in representing Client under this Agreement at no additional cost to Client. This staffing flexibility allows the Firm to provide efficient and effective services within the Scope of Services.

12. Payment Disputes

We are committed to working with our clients on payment issues. Client agrees to resolve any payment disputes directly with the Firm and not through a credit card company. In the event of a disputed fee or chargeback, Client agrees to pay the Firm for all fees and costs related to the disputed fee and chargeback processing. If a delinquent bill is brought to collections, Client agrees to pay all related costs, disbursements, and reasonable attorneys' fees.

13. Late Payments and Firm Remedies:

If a membership fee is not paid within thirty (30) days of the billing date, despite the Firm's efforts to work with Client, Client will be considered delinquent. In such cases:

- a. Firm reserves the right to terminate Client representation.
- b. Firm may charge Client interest on all amounts owed at a rate of 10% per annum, compounded annually, starting on the date Firm notifies Client that the payment is more than 30 days past due. This interest rate will not exceed the maximum rate permitted by applicable law.
- c. If Client's account is more than 30 days past due, any payments made by Client will be applied first to any accrued interest and then to amounts owed under the outstanding invoices, in chronological order.
- d. If Firm declares Client's account delinquent, Client will reimburse Firm for any expenses incurred in collecting on Client's account, including attorneys' fees.

The Firm's exercise of any of these remedies does not waive its right to pursue other available legal remedies.

14. Advance Conflicts Waiver

Client acknowledges and agrees that the Firm anticipates representing numerous other radio and television broadcasters. It is possible that during the time the Firm is representing Client, some of Firm's current or future clients will have disputes or transactions with Client.

For example, while the Firm is representing Client on FCC regulatory compliance and legal matters related to broadcast law, the Firm has or may have other clients whom it represents in connection with similar or related matters.

By signing this Agreement, Client expressly agrees that the Firm may continue to represent, or undertake in the future to represent, existing or new clients in any matter, including litigation, even if the interests of such other clients in such other matters are directly adverse to Client's interests, so long as those matters are not substantially related to the Firm's work for Client.

15. Confidentiality and Public Relations

Firm is not authorized to waive or release any privilege or to waive or release any other protection of information, confidential, secret or otherwise, obtained from or on behalf of Client. Firm will keep all confidential, privileged, or secret information confidential. This requirement is perpetual and will continue even after the termination of the relationship and this Agreement.

16. Publicity

Unless Client has advised Firm otherwise in writing, by signing this agreement, Client agrees that Firm may use Client's name and logo solely for the limited purpose of referring to Client as a client of NCE Counsel. This use may occur on Firm's website (including a link to the homepage of Client's website), social media pages and profiles, and in Firm's marketing materials.

17. Ownership of Firm Work Product

Upon full payment, all work product prepared by NCE Counsel for Client becomes Client's property. The Firm may keep copies for its records and may reference the materials in a manner that does not disclose Client's identity or confidential information. Client agrees to pay a retrieval fee, to be quoted in advance, for documents requested after file closure. NCE Counsel retains all intellectual property rights in its systems, processes, and methodologies even if these are reflected in the work product provided to Client.

18. Entire Agreement

This Agreement expresses the full and complete agreement between the parties regarding Client's engagement of Firm to provide monthly subscription legal services. Any other agreements between Client and the Firm are hereby superseded and replaced.

19. Waiver

No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

20. Amendment

No supplement, modification, or amendment of this Agreement shall be valid unless it is in writing and signed by all parties.

21. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

22. Enforcement

In the event of a breach of this Agreement or non-compliance with a term contained herein by either party, the substantially prevailing party shall be entitled to recovery of any reasonable costs, including attorneys' fees and expenses, incurred in enforcing this Agreement.

23. Governing Law and Venue

This Agreement shall be governed in accordance with the laws of the District of Columbia, without regard to its conflict of law principles. Any suit in connection with this Agreement shall be brought and maintained in the courts of the District of Columbia. The parties irrevocably submit to the jurisdiction of such courts for the purpose of such suit and irrevocably waive, to the fullest extent permitted by law, any objection they may have to the venue and any claim that the forum is inconvenient.

24. Consent and Voluntary Agreement:

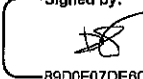
By signing this Agreement, Client certifies and acknowledges the following:

- a. Client has read and fully understands all terms and conditions of this Agreement.

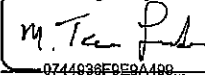
- b. Client has had the opportunity to review the entire Agreement and consult with financial and legal counsel of their choosing.
- c. All questions in connection with this matter and this Agreement have been fully and completely explained to Client's satisfaction.
- d. Client has no remaining questions about this Agreement or the membership services to be provided.
- e. Client voluntarily enters into this Agreement and gives informed consent to its terms.

In Partnership,

NCE Counsel PLLC

Signed by: 
By: 89D0F07DE6C2406...
Dwayne Sam
Founding Member

ACCEPTED:

DocuSigned by: 
By: 0744038F0E9A490...
Taw Lindsey

Date: 1/9/2025