

PERSONAL SERVICES AGREEMENT NO. 071560

PROJECT: General Legal Counsel Services 2022-2205

CONSULTANT: Phillips Burgess, PLLC, 111 21st Avenue SW, Olympia, WA 98501

PROJECT MANAGER: Erin Galeno **GL ACCOUNT NO.** 10-6010-62-0000-00

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (*hereinafter referred to as the "Port"*) and **Phillips Burgess, PLLC** (*hereinafter referred to as the "Consultant"*) for the furnishing of General Legal Counsel Services 2022-2025 Personal Services (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

SCOPE OF WORK

Consultant will provide legal services to the Port, including general legal counsel services and litigation services, as set forth herein and as requested by the Port to include but not limited to:

General Counsel Services. Consultant shall provide practical legal advice to the Port Executive Director, the Port Staff, and the Port Commission, regarding the legal risks of certain courses of action, recommend legal strategies, ensure compliance with all relevant laws and statutes, recommend and engage special legal counsel on matters as directed and approved by the Port Commission or the Port Executive Director, and represent the Port as its general legal counsel. Duties include:

1. **Executive Participation:** Work directly with the Port's management team, supporting the strategic management of the Port and the formulation and adoption of Port-wide goals, objectives, strategies, policies and procedures.
 - Assists in developing resolutions to issues and situations impacting the Port's ability to operate effectively, efficiently and within its statutory and legal boundaries.
 - Provide legal support with issues relating to public governance, including review of Commission agendas, approving Executive Session agendas.
 - Collaborates with Northwest Seaport Alliance (NWSA) and Port of Seattle (POS) Legal Counsels to ensure the best interests of the POT, POS and NWSA are met.
 - Provide determination regarding the boundaries of the Port's legal authority both with respect to NWSA roles, Port operations, strategic initiatives and day to day policies and procedures.

- Attends the Executive Team and Agenda Review meetings, senior team retreats at the request of the ED.
2. **Legal Policy Guidance**: Reports directly to the ED and Commissioners and provides legal guidance and general advice as necessary on significant decisions at the management level.
 - Provides direct legal counsel to the Commissioners regarding a variety of governance and policy issues.
 - Review Port public records requests as requested and provide counsel on practical solutions to meet public records requirements;
 - Support vetting protocols on significant legal matters that ensure Commissioners' input is received on legal strategy in advance of its execution and will work with the Commission President and ED to define the Commission perspective on significant legal matters.
 3. **Public Governance**: Assists with issues relating to public governance, including review of Commission agendas, approving Executive Session agendas, and attending all Port Commission meetings to solve any procedural issues and responding to substantive legal questions raised in public or executive session meetings.
 4. **Employment**: Review serious employee discipline matters and all involuntary terminations must be reviewed in advance by the GC.
 - Oversight of investigations of employment matters,
 - Responsible for Workplace Responsibility/Ethics compliance issues: to include communication and training and investigating workplace complaints.
 5. **Regional Interaction** with regulators, interest groups, government officials and bodies, to include
 - Providing advice to the Port's Government Affairs staff,
 - Drafting and reviewing proposed legislation,
 - Working with port organizations and stakeholders and appearing before legislative committees.
 - Meet as requested with Commissioners and local elected leaders, staff, NWSA Executives and Counsel to develop local and regional policy strategies or transactional matters.
 - Interact as requested with a variety of state and federal civil rights, employment and health and safety agencies.
 6. **Interagency Interaction**: Provide advice and support for Port's intergovernmental and cooperative actions and agreements with other state agencies and tribal governments.

- Knowledge of current and historical federal, state, and local legislative issues relevant to the Port,
 - Navigates political issues and relationships while advancing the Port's interests.
7. **Audit Functions**: Prepare for and responding to a variety of audits including the Washington State Auditor Office (SAO) compliance and performance audits, financial bond compliance audits, internal audits, and federal audits and investigations as they arise.
8. **Litigation oversight**: When requested by the Port, GC will provide oversight to other legal support contracts and efforts as well as assist with legal firms the Port contracts with to lead Litigation services.
9. Excluded from the scope of the General Legal Services covered by this Agreement:
- Appearing in ligation as counsel for the Port, though some oversight of ligation would be expected
 - Commercial and Real Estate lease development and support
 - Financial support and bond counsel
 - Specialized Environmental support
 - Labor and HR support
 - Specialized Financial support
 - Workplace Investigations

GENERAL CONSIDERATIONS

The Managing Attorney for this Contract is Heather Burgess. The Port may request other Phillips Burgess attorneys to work on projects more suited to their experience, background, or availability.

Nothing in this Agreement shall preclude the Port, at its sole discretion and in consultation with Consultant, from contracting for additional legal support due to special circumstances, scope, or workload issues where other outside counsel would be more appropriate.

The Parties intend that Phillips Burgess, PLLC, may also perform certain litigation services in support of the Port of Tacoma when requested and authorized by the Executive Director. "Litigation" shall mean the assertion of any position, right, or responsibility by or against the Port, which is potential or has been threatened or filed in any court of general or special jurisdiction, be it state or federal, or any quasi-judicial or administrative forum. Activities conducted prior to the filing of litigation shall also be considered litigation if those activities have been authorized by the Executive Director or the Commission in contemplation of litigation.

The Port does not guarantee that any litigation services in these certain areas may arise during the term of this Agreement. Activities conducted prior to the filing of litigation shall be performed under the Fixed-Fee services unless mutually agreed otherwise.

Litigation services assigned to Consultant under this Agreement shall generally include general business issues, unless the Port, at its sole discretion and in consultation with Consultant determines that due to special circumstances, scope or workload issues, other outside counsel would be more appropriate.

A separate personal services agreement for litigation services will be entered when mutually agreed upon between the Port and Consultant for each litigation matter. Contract amounts for litigation services shall be based upon written proposals prepared by Consultant and agreed to by the Port. Such proposals will include a scope of work, all assumptions and an estimate of the number of hours and associated hourly rates required to complete the work, as shown on Attachment A.

In instances where the Consultant is not performing the litigation directly, Consultant shall provide pre-litigation, litigation, and post-litigation support to Port Project Managers and outside legal counsels for the benefit of the Port.

Consultant will keep the Port advised as to the status and progress of all matters, and will provide the Port with copies of documents prepared or received, together with letters or phone calls that are made to the Port. Files on Port matters will be open for inspection by the Port at any reasonable time. Consultant will make every effort to handle Port matters promptly and efficiently according to established legal and ethical standards. Where there is a dispute which is subject to a third-party resolution, Consultant cannot predict the final result or predict with any degree of precision the amount of time necessary to properly represent the Port's interests. The Port's legal matters will be completed as quickly as possible and without any unnecessary charges.

Consultant shall provide a monthly report with its invoice, reflecting the number of hours of labor by department.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

All invoices shall be emailed to cpinvoices@portoftacoma.com. The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

Consultant agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

Consultant agrees to protect, indemnify, and hold harmless the Port of Tacoma and its officers, officials, employees, and volunteers from and against all claims, demands and causes of action by Consultant's employees or third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed by Consultant hereunder and resulting from the negligent acts, or omissions of the Consultant, Consultant's agents, employees or subcontractors.

ASSUMPTIONS

1. Paralegal type work is billed at the Paralegal rate. Paralegal work includes such things as document comparisons, deliveries, service actions, recordings, project preparation, calendaring, research court rules, and general document review.
2. Monthly and annual reports include a breakdown of hours worked per person and the number of hours worked at each billing rate.
3. Monthly reports and updates shall be provided for special projects (projects not billed as flat-rate projects) and litigation projects. The report shall include all hours worked by each attorney and staff including their rates.
4. Emails to Department and Project leads are responded to in a timely manner, to mean within two (2) business days.
5. Outlook meeting requests are responded to in a timely manner, to mean within two (2) business days.
6. Estimated project completion dates shall be reported to the Port Project Manager on a weekly basis. Any unexpected circumstances that may delay completion will be promptly reported to the Port Project Manager.

COMPENSATION

Compensation for general legal counsel services shall be based on annual hours of 800 with a fixed fee of **\$20,420.00 per month** (to include all expenses). The retainer shall be fully earned and non-refundable when paid. Total cost will not exceed **\$1,050,000 for the four-year period.**

COMPENSATION ASSUMPTION

The flat fee is based on a range of hours from 800 to 1,000 hours per month. At the Port's discretion, in June of 2022 a six (6) month pricing review will be held to evaluate the Port's general legal usage. The Executive Director will notify the Commission of any authorized changes to the base fee that are within his delegation. Commission authorization will be requested for any changes that exceed the Executive Director's authorization.

Future options to renew will include a 3% increase to the monthly retainer.

TERM

The initial term of this Agreement will be from **January 1, 2022 through December 31, 2024** with the option for one (1) year renewal at the sole discretion of the Port, for a possible total of four (4) years.

CONFLICTS OF INTEREST

It is expressly understood that Phillips Burgess, PLLC, presently performs and will continue to perform general legal counsel and other legal services for other Washington port districts as well as other business and individual clients in Washington during the term of this Agreement. Phillips Burgess, PLLC, is not aware of any present conflict of interest with respect to the

performance of any of those services. If a conflict of interest arises in the future, then it will be resolved according to applicable rules of professional conduct and other applicable law.

PRECEDENCE

Should any conflict arise between the terms and conditions contained within a new agreement for services contemplated hereunder (e.g., a professional services agreement for a litigation matter), and this Agreement, the terms and conditions contained herein will govern, except to the extent that any such new agreement expressly states its intent to modify or supersede the terms of this Agreement.

This agreement is expressly conditioned upon the Terms and Conditions attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

AGREED

PORT OF TACOMA

PHILLIPS BURGESS, PLLC

By

By

Sharon Rothwell Date
Director, Contracts & Purchasing

Heather Burgess Date
Managing Partner

Port of Tacoma Terms And Conditions Personal Services Agreement Outside Counsel

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

1. Representatives

The Port's Project Manager and Consultant's Representative for this Agreement are as specified. Alternate representatives may be appointed by either party with written notice to the other party.

2. Key Personnel

The Consultant and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the engagement unless otherwise agreed to by the Port.

3. Relationship of the Parties

Consultant, its subconsultants and employees, is an independent Contractor. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

4. Conflicts of Interest

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

5. Compliance with Laws

Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the engagement

6. Records and other Tangibles

Until the expiration of six years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

7. Ownership of Work

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to any specifications or other products prepared by the Consultant pursuant to this Agreement. Consultant shall not be responsible for changes made in the specifications or other products by anyone other than

the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior consent.

8. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the Port, unless required by law.

9. Deliverables

Delivery of materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on floppy disk or CD-Rom in a PDF format or other format specified by the Port.

10. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement.

11. Payment Schedule

Consultant shall submit detailed numbered invoices showing contract number, description of services being invoiced, Port project number and title (for litigation contracts), total authorized, total current invoice, balance of authorization, individual's names and titles, hours, and hourly rate by the 10th of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

12. Costs and Disbursements

Consultant shall pay all costs and disbursements required for the performance of its services under this Agreement.

13. Insurance - Assumption of Risk

a) As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the term of this Agreement, such commercial general liability insurance as shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by

the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them.

b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

c) With respect to professional liability claims only, and not commercial general liability claims, Consultant and its subconsultants agree to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

d) Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:

i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; and

ii) Professional Liability not less than \$1,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years.

e) All policies shall be issued by a company having an A. M. Best rating of A:VI or better. The Port shall be given 45 days prior written notice if coverage is suspended, voided, or reduced, and the Port shall be given not less than 10 days notice in the event of cancellation for non-payment of premiums. Except for professional liability, the Port shall be named as an additional insured on all policies on ISO Form CG 20 10 Form B.

14. Standard of Care

Consultant shall perform its work to conform to generally accepted professional standards.

15. Time

Time is of the essence in the performance by the Consultant of the services required by this Agreement.

16. Assignability

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

17. Term of this Agreement

The effective dates of this Agreement are as specified. This Agreement may be terminated by the Port for cause when the Port deems continuation to be detrimental to its

interests or for failure of the consultant to perform the services specified in the Agreement. The Port may terminate this Agreement at any time for government convenience in which case it shall provide notice to the Consultant and reimburse the Consultant for its costs and fees incurred prior to the notice of termination.

18. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

19. Extent of Agreement

All understandings, representations and agreements heretofore had with respect to this Agreement are merged into and are superseded this Agreement which alone fully and completely expresses the agreement of the Parties. This Agreement is the entire, integrated and final Agreement between the parties on this matter. This Agreement may be amended only by written instrument signed by both the Port and Consultant.

Attachment "A"

HOURLY RATES

Phillip Burgess, PLLC

<u>Personnel</u>	<u>Hourly Rates</u>	
Attorney	Standard Rate (2020)	Discount Rate (800 hr base)
Heather Burgess	\$400/hour	\$315/hour
Daniel Berner	\$325/hour	\$260/hour
Trevor Zandell	\$350/hour	\$285/hour
Lacey Hatch	\$325/hour	\$260/hour
Rosemary Boelens	\$300/hour	\$245/hour
Kent van Alstyne	\$275/hour	\$235/hour
Tadeu Velloso	\$275/hour	\$235/hour
Paralegals		
Deanna Gonzalez	\$150/hour	\$125/hour
Rae Charlton	\$150/hour	\$125/hour
Crystal Maynor	\$125/hour	\$100/hour

Total Hours (Annualized)	Flat Fee (Monthly)
800	\$20,420.00

Additional personnel are not authorized without prior written approval from the Port's Executive Director or Contract Manager.

This rate sheet to be updated and submitted on an annual basis during the term of the Contract.