

PORT OF BROOKINGS HARBOR
Special Commission Meeting
Wednesday, December 22, 2021 • 10:00am
Teleconference / Meeting Room *(limited capacity)*
16350 Lower Harbor Road Suite 202, Harbor OR, 97415

Teleconference Call-In Number: 1 (253) 215-8782

Meeting ID: 771 205 4017

Passcode: 76242021

(to mute/unmute: * 6)

TENTATIVE AGENDA

1. CALL MEETING TO ORDER

- Roll Call
- Modifications, Additions, and Changes to the Agenda
- Declaration of Potential Conflicts of Interest

2. APPROVAL OF AGENDA

3. PUBLIC COMMENTS – (Limited to a maximum of three minutes per person. Please email your comments to portmanager@portofbrookingsharbor.com prior to the meeting, if you are calling in. *****Please wait to be called on before speaking*****)

4. ACTION ITEMS

- A. General Counsel Services – Miller Nash LLP Contract Approval

5. INFORMATION ITEMS

- A. None

6. COMMISSIONER COMMENTS

7. NEXT REGULAR MEETING DATE – Wednesday, January 19, 2022 at 2:00pm

8. ADJOURNMENT

A request for an interpreter for the hearing impaired, for those who want to participate but do not have access to a telephone, or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Brookings Harbor Office at 541-469-2218.

ACTION ITEM - A

DATE: December 22, 2021
RE: General Counsel Services – Miller Nash LLP Contract Approval
TO: Honorable Board President and District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Board approved entering into a contract with Miller Nash for a two-year agreement at the Special Commissioner Meeting on December 17, 2021.
- Port received a draft Agreement of Legal Services from Miller Nash LLP.
- Port legal counsel review the agreement and has added the Port insurance requirements as part of the agreement.

DOCUMENTS

- Draft Miller Nash LLP draft Agreement of Legal Services, 6 pages
- Port Contractor Insurance Requirements Acknowledgement and Agreement, 1 page

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to approve Miller Nash LLP agreement of legal services including contractor insurance acknowledgment and agreement.



James M. Walker
james.walker@millernash.com
503.205.2353 (direct)

December 20, 2021

VIA EMAIL
PORTMANAGER@PORTOFBROOKINGSHARBOR.COM

Gary Dehlinger
Port Manager
Port of Brookings Harbor
16330 Lower Harbor Rd
Brookings, OR 97415

Subject: Agreement for Legal Services

Dear Gary:

Thank you for asking Miller Nash LLP to provide legal services to the Port of Brookings Harbor (the "Port"). This letter confirms the scope of our engagement as counsel and provides information about our fees, billing information, and other terms that will govern our relationship. If the terms below are acceptable, we ask that you return a signed copy of this letter to us. A copy by email is fine.

1. Client; Scope of Representation.

Our client in this matter will be the Port. Accordingly, we will take primary direction from the Board of Commissioners and work with the Port's executive and administrative staff in response to direction given. We will not be representing you personally, other individuals who may be commissioners, officers, managers, or employees of the Port, or entities that may be subsidiaries or affiliates of the Port.

We have been engaged to provide general counsel services to the Port for a two-year term, effective January 1, 2022. As general counsel, we anticipate providing legal services related to the executive and administrative functions of the Port, which will include advice concerning special district governance, public employment law, land use law, landlord-tenant law, and public contracting law. We also expect to provide legal services on behalf of the Port in connection with specific litigation or transactional matters.

4853-5209-3959.3



We may provide legal advice that affects a business decision. But the services we provide are legal services. The business decisions are yours.

We expect the Port will rely on its outside accountants or bookkeeper for tax advice. We will not provide tax advice, except to the extent that the Port asks for our tax analysis of a specific event or transaction. Our tax law department can provide tax analysis and planning at the Port's request.

Our engagement does not include providing any advice or other legal services relating to federal or state securities laws.

2. Fees and Expenses.

I will have primary responsibility to see that the Port's legal needs are met. Other lawyers in the firm, as well as paralegals, will be part of the team helping with the work.

Our fees are based on the billing rate for each attorney and paralegal devoting time to the Port's matters. Clients occasionally ask us to estimate the amount of fees and costs likely to be charged in a particular matter. These estimates are not guaranteed maximum amounts. The time and effort required will vary from situation to situation. This is especially true in matters involving negotiation, in which factors not within our control often affect the fee.

Our standard billing rates for attorneys currently range from \$325 per hour to \$800 per hour, based on experience level and practice area. For the Port, my rate is \$390 per hour. Consistent with our response to the Port's request for proposals, rates for firm personnel performing services for the Port will be billed at the rates below. These billing rates may be adjusted annually:

- Partners and Senior Counsel performing services for the Port will do so at a rate of \$390 per hour.

- Senior associates performing services for the Port will do so at a rate of \$325 per hour.



- Junior and midlevel associates performing services for the Port will do so at a rate of \$285 per hour.
- Paralegals performing services for the Port will do so at a rate of \$200 per hour.

We will send the Port monthly statements describing the work done and expenses incurred through the previous month. Expenses are charged to the Port at cost; we do not add an administrative fee. If a statement is not paid within 30 days, we may suspend performing services until arrangements satisfactory to us have been made for payment of outstanding and future charges, and may charge 9 percent per annum interest on overdue amounts from the invoice date.

If at any time you have a question about our fees, please let us know. We want our charges to represent the fair value of our services to our clients.

3. Responsibilities.

Effective legal representation requires that the Port accept certain responsibilities. We expect the Port will:

- be candid and cooperative with us and keep us informed with complete and accurate factual information, documents and other communications relevant to our representation;
- allow reasonable time for us to prepare agreements, complete filings, and otherwise conduct our work; and
- inform us of any changes in contact information, including address, telephone number, and email address.

We may express views or beliefs about possible strategies and expected results. These statements are intended to be an expression of opinion only, based on information available to us at the time, and not a promise or guarantee.

4. Communications.

Our communications on this engagement will be with you or with other Port personnel identified to us in writing as authorized contacts.

We will use Internet-based services, such as email, to communicate with the Port. These services involve some risk that third parties may hack into or otherwise intercept confidential communications, but we believe that the benefits outweigh the risk of accidental disclosure. We recommend that Port personnel avoid using computers or other communications tools that are owned, controlled, or accessible by others, such as public Wi-Fi networks, cloud storage, or shared home or office computers. Use of any computer, device, or account that is accessible by others increases the risk of hacking and could result in loss of the attorney-client privilege. Any device used by Port personnel use should be password-protected.

If the Port would like for our email communications to be encrypted, we will work with the Port to establish encryption protocols.

5. Consent to In-House Attorney-Client Privilege.

Sometimes we need to get our own legal advice about our duties to our clients or our handling of a matter. We then confer with an attorney (typically within the firm) who is responsible for providing us with legal advice on these questions. The Port is not charged for this advice.

In some jurisdictions, this in-house consultation may not be protected by attorney-client privilege. By engaging us, the Port consents to our consulting with our firm's counsel (either in-house or outside) on a privileged basis, and confirms that our contemporaneous representation of the Port will not waive, limit, or invalidate the privileged nature of the consultation.

6. Conclusion of Representation.

The Port has the right to terminate our services for any reason at any time. We request that if the Port does so, the Port notify us in writing so that there is no confusion.



In some circumstances, we may find it necessary or appropriate to withdraw from representing the Port. We will give the Port prompt notice of withdrawal in writing, and will take steps that are reasonably practicable to protect the Port's interests.

Termination of our services or withdrawal from representation does not affect the Port's obligation to pay for legal services and expenses incurred up to the time of termination.

Unless previously terminated, our representation is concluded when we send our final statement for services rendered in this matter. After our representation of the Port in this matter is concluded, we will provide advice as to future legal developments affecting the matter only if the Port specifically engages us to do so.

7. Client/Transaction Listings.

Periodically, our firm publicizes names and corporate logos of selected clients and a brief description of significant projects on which we worked. These descriptions will include only information that is publicly available. We would like to have the option of including the Port as one of these selected clients whose successful projects we briefly describe. We will assume that by engaging us, the Port consents to our doing so, unless the Port notifies us otherwise. The Port may withdraw its consent in writing at any time.

8. Return and Disposition of Documents.

At the Port's request, any papers and property the Port provides us will be returned promptly upon receipt of payment for outstanding fees and costs. The Port may also obtain copies of the Port's "external" files (e.g., external correspondence and emails) at our cost of retrieval and duplication, so long as we still retain them. "Internal" files (e.g., internal firm emails, memos prepared for our own use, and firm administrative records) are the property of the firm. For various reasons, including reducing unnecessary storage expenses, we typically destroy or otherwise dispose of any documents or other materials retained within a reasonable time after the representation ends without further notice to you.



9. Sign and Return.

Let me know if you have any questions about our engagement terms. If this letter is acceptable, we ask that it be signed on behalf of the Port and returned to us for our file. Sending a scanned copy by email is fine. While we'd prefer to have a signed copy of this letter, if we don't receive it but we proceed with the Port's work at its request, we will consider ourselves engaged on the terms of this letter.

We are pleased to have this opportunity to work with the Port. Contact me at any time if you have questions or comments about our work.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'James M. Walker', is written over the typed name. The signature is fluid and cursive.

James M. Walker

ACKNOWLEDGED AND AGREED:

PORT OF BROOKINGS HARBOR

By: _____
Name: _____
Title: _____



PORT OF BROOKINGS HARBOR CONTRACTOR INSURANCE REQUIREMENTS ACKNOWLEDGMENT AND AGREEMENT

James M. Walker, on behalf of Miller Nash LLP, hereby acknowledges and agrees to abide by the following insurance requirements for Port of Brookings Harbor contractors:

During the term of the Agreement for Legal Services, the following coverages in the following minimum amounts shall be procured and maintained by Miller Nash LLP:

1. **Professional Liability:** Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2 million. Annual aggregate shall not be less than \$2 million.
2. **Commercial General Liability:** Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. Such insurance shall be primary and non-contributory. Coverage shall be a minimum of \$2 million per occurrence, and \$2 million aggregate.
3. **Automobile Liability:** If Firm will be driving in conjunction with the performance of services under the Agreement, then the Firm shall maintain Commercial Automobile Liability Insurance for all owned, hired, and non-owned vehicles with a combined single limit per occurrence of not less than \$1 million.
4. **Workers' Compensation:** Workers' compensation coverage compliant with Oregon Workers' Compensation Law (ORS Ch. 656) for all persons providing services to the Port of Brookings Harbor.

Dated: _____

James M. Walker
Miller Nash LLP