



February 28, 2025

**TO: Holder's List**

**SUBJECT: RFI NO. PA00000025 Labor and Employment Legal Services**

**ADDENDUM NUMBER 01**

This addendum is issued to add, remove, clarify, and amend the following:

**Exhibit B Port of Tacoma Outside Counsel Guidelines**



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P.O. Box 1837  
Tacoma, WA 98401-1837  
[www.portoftacoma.com](http://www.portoftacoma.com)

# **Port of Tacoma**

## **Guidelines for Outside Counsel**

**Effective July 1, 2021**

**(Rev. 1 – July 5, 2021)**

These guidelines (hereafter “Outside Counsel Guidelines”) serve to guide the relationship between the Port of Tacoma (“Port”) with outside legal counsel and to outline the Port’s expectations of outside counsel. These guidelines take effect on July 1, 2021 for all pending and future legal matters and may be updated from time to time. Future updates to these guidelines will be provided to outside counsel if issued.

## I. General Provisions

The Port’s goal in retaining outside counsel is to obtain the highest quality legal services, efficiently and ethically rendered at a reasonable cost. The following general provisions are intended to help the Port, in coordination with outside counsel, achieve that goal.

**Communication:** For each matter, the Port’s General Counsel or other designated representative will be responsible for ensuring that appropriate Port personnel are informed about and make the necessary substantive decisions about the matter and that outside counsel is kept appropriately informed both about Port’s objectives in the matter and about pertinent business issues and developments.

- **Litigation matters.** For matters involving actual or potential litigation, outside counsel should generally direct communications to the Port’s General Counsel, who should be consulted before any direct communication with Port employees, representatives, or Commissioners takes place. Unless otherwise authorized, copies of documents should be sent only to the Port’s General Counsel.
- **Non-litigation matters.** Outside counsel providing regular advice to Port staff on a contract basis (i.e. labor/employment, bond counsel) can and should communicate directly with appropriate Port staff requiring such advice. However, outside counsel will promptly inform the Port’s General Counsel should a matter involving actual or potential litigation arise.

All communications to Port General Counsel should be electronically submitted with no hard or mailed copies provided unless otherwise requested.

**Collaboration and Deadlines:** The Port’s General Counsel must be provided sufficient time to review drafts of all significant documents, including contracts, substantive pleadings, briefs, correspondence, and any other documents that will be provided to third parties on Port’s behalf. As used herein, “sufficient time” is usually at least three business days prior to any applicable deadline. Port General Counsel may choose to prepare drafts of pleadings or other papers and documents.

Additionally, outside counsel shall invite the Port’s General Counsel by means of an Outlook Calendar invitation for all case-related deadlines that may require counsel’s attention or advance approval prior to filing.

**Quarterly Reporting:** Outside counsel will provide a written status update to the Port’s General Counsel at least quarterly, or more frequently if circumstances warrant. Quarterly

reports are due two weeks prior to the end of the quarter (generally March 15, June 15, October 15, and December 15). For litigation matters, the report should include at least the following:

- Case Summary Info (title, cause no., date of filing, jurisdiction)
- Brief Factual Background
- Summary of Claims
- Current Status
- Expected Outcome & Risks

Outside counsel who are not representing the Port in active litigation matters should provide Port General Counsel a quarterly report identifying any potential claims or litigation, or otherwise specifying that no such matters exist within the scope of their representation during that quarter.

**Conflicts of Interest:** Outside counsel must conduct thorough checks for conflicts. Conflicts must be identified and resolved prior to representation. Outside counsel should conduct periodic checks for conflicts and promptly notify Port General Counsel should any arise.

**Confidentiality:** The Port expects outside counsel to exercise the utmost diligence in protecting attorney-client privilege and attorney-work product protections.

**Files and Records and Work Product:** All files and records maintained by outside counsel in connection with any Port matter belong to Port and upon request from Port General Counsel, shall promptly be transferred to Port or elsewhere as directed. Where appropriate, outside counsel may be asked to share files with Port General Counsel by means of an electronic shared file site such as Sharepoint or OneDrive.

## **II. Outside Counsel Engagement**

### **A. Retention Decisions**

The Port's General Counsel is responsible for the selection and supervision of outside counsel. Except as otherwise provided herein, outside counsel may not accept an engagement on Port matters directly from other Port personnel other than Port's General Counsel or Executive Director.

### **B. Personal Services Agreement and Engagement Letter**

Every engagement (or series of engagements) of outside counsel must be memorialized by a Port form personal services agreement setting forth the terms and conditions of the engagement to be prepared by outside counsel. Any such agreement will incorporate these Outside Counsel Guidelines and will include the expectation that outside counsel be familiar with and adhere to same.

### **C. New Matters**

When a new matter is assigned within the scope of an existing personal services agreement, outside counsel must create a new file and bill that new matter separately. For instance, if counsel typically provides generalized employment counsel for Port and is then asked to assist with a specific employment matter, outside counsel should open a new matter for that project and separately bill for the project.

**D. Retaining Local Counsel, Consultants, and Expert Witnesses**

Outside counsel are not authorized to retain any local counsel, consultant, expert, or vendor without the advance approval of Port General Counsel.

**III. Staffing**

At the outset of the engagement, Port General Counsel and lead outside counsel will together designate a specific lawyer within the outside counsel's law firm to be chiefly accountable for the conduct of the engagement. That lawyer should be personally and directly involved in the representation and is responsible for assuring that Port's objectives are met with respect to the engagement. The Port General Counsel must approve all members of the team handling the matter, as well as any subsequent changes to the team. Once the team is established, the Port expects continuity of staffing for the duration of the engagement, absent extraordinary circumstances.

The Port strongly encourages lean staffing on its matters. Matters should be staffed with the number and level of personnel that are appropriate in order to render quality service in a cost-effective manner. The Port prefers that its legal matters be staffed with lawyers who have developed knowledge of the Port and have appropriate subject matter expertise.

The Port expects outside counsel to use paralegals instead of lawyers whenever possible and appropriate. In general, associates should not be used for services that could be performed by paralegal or junior legal assistants; nor should paralegal or billable legal assistants be assigned tasks performable by secretaries, clerks, and messengers (*e.g.*, photocopying, filing, delivering materials, scheduling meetings, etc.)

The Port expects that outside counsel remain mindful of the fact that the Port is a public agency funded by taxpayer dollars and as such, outside counsel shall exercise good judgment with regard to the amount of time billed to Port matters by each timekeeper and any related expenses.

Prior approval by Port General Counsel is required before staffing an activity such as mediation, conferences, depositions, appearances, or trial with more than one lawyer. In general, the Port will not approve or pay for the attendance of more than one lawyer at any one such activity. The Port will also only pay for reasonable internal conferencing between more than one lawyer in a firm.

**IV. Fees, Disbursements, Budgets, and Billing**

**A. Fees**

## 1. *Billing Rates*

In matters that are to be billed based on the law firm's hourly rates, outside counsel shall, upon engagement of the firm, provide the Port's General Counsel with a schedule showing the billing rate for each timekeeper assigned to the engagement, which shall also be incorporated into the personal services agreement. Once agreed upon at the commencement of a matter, outside counsel's scheduled billing rates shall remain in effect for the term of the engagement unless approved in writing by the Port General Counsel. A written request for rate change must be made to Port General Counsel sixty (60) days in advance of the proposed change unless otherwise agreed to and written into the contract between the Port and the outside law firm or counsel. In no event shall outside counsel billing rates be increased more than once in any twelve-month period.

## 2. *Charges for Services*

Unless an alternative fee structure has been agreed upon, bills should reflect actual time reasonably expended. Unless otherwise directed, the time for each activity should be separately stated. The number of hours for which the Port is billed should be the subject of "billing judgment" exercised by the lead outside counsel, so that the fees charged reflect only the time appropriately and productively devoted to the matter. As guidance, the Port will not pay for:

- Client development activities;
- Conflict review;
- Preparing or reviewing invoices or responding to billing inquiries;
- Calendar or schedule maintenance;
- Basic research on topics considered to be within the firm's scope of expertise;
- Summer associate time;
- Training;
- Secretarial or clerical work (defined as: maintenance of internal databases, bates stamping, filing, preparing bills, indexing pleadings, opening, and closing files, scheduling meetings, or making travel arrangements, participating in review or "feedback" sessions, and billing audits);
- Filing;
- "Learning time" or "ramp-up time" required by the substitution of attorneys or paralegals working on the engagement;
- "Learning time" to educate any staff on standard procedural matters or basic substantive law;
- Duplicative document review.

Absent advance approval from Port General Counsel, the Port will not pay for:

- Attendance by more than one attorney at external meetings, depositions, or hearings;
- Legal research projects that exceed 3 hours;

- Oversight of a senior attorney for a junior attorney's work. Counsel assigned to the Port are expected to have the expertise and judgment to counsel the Port independently.

## **B. Disbursements**

The Port will reimburse outside counsel for actually incurred out-of-pocket expenses with no mark-up, provided those expenses are itemized and reasonable. Invoices should be described in sufficient detail so that there is no question of the nature of the expense involved or the reason for it. Payments to court reporters, expert witnesses, outside contractors and others must identify the recipient by name.

The Port expects outside counsel to use best efforts to minimize reimbursable out-of-pocket costs both by avoiding unnecessary expenditures and by selecting competitively priced vendors and service providers.

The Port expects outside counsel to avoid unnecessary travel through such alternatives as teleconferencing. Travel and business expenses will be paid in accord with usual Port travel and business expense policies. If outside counsel is traveling on business for more than one client, such expenses shall be apportioned appropriately. Unless otherwise specified in the outside counsel's contract, the Port will only pay for 1/2 of timekeepers' rate for time spent traveling unless outside counsel works on Port business while traveling, in which case, outside counsel may charge their full rate.

When outside attorneys or staff members are working at their normal office locations, the Port will not pay for meals or other incidental expenses.

Transmission of information and documentation by electronic means has made routine copying, faxing and delivery of hard copy documents less critical and, in many cases, unnecessary. Consistent with appropriate security requirements, the Port expects outside counsel to maximize the use of technology to minimize photocopying, facsimile, and messenger expense. Photocopies will be reimbursed at actual cost incurred by the firm, and in no event at more than \$.10 per image.

## **C. Budgeting**

In engagements where professional fees are expected to exceed \$25,000, outside counsel shall prepare a budget and shall render its bills in a form corresponding to that budget. A sample budget is attached as Appendix A hereto. This budget shall be prepared within 30 days of retention.

Prior to incurring unbudgeted fees for a particular task, outside counsel must obtain the advance approval of Port Legal Counsel. In the absence of prior approval by inside counsel, Port will not pay bills for legal fees and expenses for a particular task that exceed the budget approved for that task. Budgets shall be reviewed quarterly, and a review of the budget should be included in quarterly reporting on the matter.

#### **D. Invoices**

Unless Port Legal Counsel approves different arrangements or otherwise specified within the personal services agreement, bills should be rendered monthly, within 30 days after the end of the month in which the services were rendered, and should include only fees for services performed in the immediately preceding month. The Port reserves the right to request copies of the firm's billing records and supporting documentation with respect to Port charges and to conduct audits of the bills. The Port expects the lead outside counsel to review all invoices. The Port reserves the right to dispute and not pay any charges improperly billed to Port and/or otherwise in violation of these Outside Counsel Guidelines.

Each matter should be invoiced separately, and each invoice must contain the following information:

- Total hours worked by each timekeeper;
- Itemized expenses and disbursements;
- Total fees and disbursements for the billing period;
- Total fees and disbursements billed and paid to date from the inception of the matter.

#### **V. Reporting**

Outside counsel should submit regular written reports to Port General Counsel with respect to the status of all matters handled on behalf of Port. For litigation or pending litigation matters, the first report should be made no more than 30 days after outside counsel is assigned the matter, and subsequent updates should be made no less frequently than two weeks prior to the end of each quarter. Updates should also include a budget review.

From time to time, outside counsel may be asked to prepare a status memo to the Port Commission. Such status memoranda should be provided in proposed final form a week prior to the deadline for submission to the Port Commission.

For litigation cases in which the Port is a defendant, the initial report should include: a discussion of the factual bases for, and the strengths and weaknesses of allegations against Port including available defenses; preliminary strategy for the defense of the matter; preliminary evaluation of the exposure; and a litigation budget generally in accord with Appendix A. Outside counsel should also discuss the desirability, likelihood, and potential range of settlement.

#### **VI. Insurance Coverage**

When a matter is covered by one of Port's insurance policies, outside counsel will be considered to be "assigned counsel" for purposes of this paragraph and may be bound by the reporting and other requirements of that third party. At no time may assigned counsel take a position on or give advice on insurance coverage to any party. Assigned counsel must remember to adhere to its duties of loyalty to the Port as the client.

## **VII. Media or Public Comment**

The Port does not authorize outside counsel to offer media or other public comment on Port or matters being handled for Port or respond to requests for comment. Any inquiries or proposed public comment about the Port or a Port matter must be referred to Port Legal Counsel and/or to the Port's Senior Manager for Communications.

**APPENDIX A**  
**SAMPLE BUDGET**

**Note:** Firm may use its own budgeting form or tool that provides the below minimum information.

**Budget**

[Matter]

Budget Through Trial

Timekeepers	Roles	Hourly Rate
	Partner	
	Associate	
	Paralegal	

**Assessment:**

Task	Hours	Cost
Fact Investigation / Development		
Analysis / Strategy		
Experts		
Document / File Management		
Reporting		
Settlement / Non-Binding ADR Potential mediation including drafting mediation brief and attending mediation.		
Costs (provide detail)		
<b>Total for Phase</b>		

**Pre-Trial Pleadings and Motions:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Pleadings Draft Answer and review. Analysis of pleadings of other parties		
Other Written Motions		
Costs		
<b>Total Fees for Phase</b>		

**Discovery:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Written Discovery		
Document Production		
Depositions (specify anticipated number of depositions, and if known, deponent(s))		
Expert Discovery – including depositions of expert witnesses		
Costs		
<b>Total Fees for Phase</b>		

**Trial:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Fact Witnesses		
Expert Witnesses		
Written Motions and Submissions		
Other Trial Preparation and Support		
Trial and Hearing Attendance		
Costs		

<b>Total Fees for Phase</b>		
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**ESTIMATED TOTAL FEES AND COSTS THROUGH TRIAL:**

(Estimated Costs include \$ \_\_\_\_\_ for deposition costs and \$ \_\_\_\_\_ in expert costs)