

**2018-2019 MEMORANDUM OF UNDERSTANDING
BETWEEN
OCEAN HIGHWAY AND PORT AUTHORITY OF NASSAU COUNTY, FLORIDA
AND
DAVIS, BROUSSARD, & STEGER, PLLC**

1. **PURPOSE:** This Memorandum of Understanding generally defines the agreement between DAVIS, BROUSSARD, & STEGER, PLLC, (“Attorneys”) and the Ocean Highway and Port Authority of Nassau County, Florida, (OHPA), an independent special district of the State of Florida (public agency) and for the provision of legal services and representation to OHPA as an independent contractor.

2. **PROFESSIONAL STANDING AND RESPONSIBILITIES:** The attorneys will, at all times during the term hereof, including any renewals, maintain professional standing with the Florida Bar, without suspension or sanction.

3 DUTIES AND REQUIREMENTS: Attorneys will provide at least one attorney in attendance at all regularly scheduled meetings of OHPA, and when required by OHPA, at special meetings and workshops of OHPA. Additional duties shall include:

- a. Drafting of the various OHPA resolutions and review of drafts of resolutions provided by others.
- b. Assistance in the hiring of professional services, including engineers, architects, employees and consultants; Review and drafting of contracts and appropriate employment agreements.
- c. Assistance to the OHPA in conforming and complying with Robert’s Rules of Order, Public Records requirements, and the Florida's Open Meeting/Government in the Sunshine Law.
- d. Assistance to the internal and external auditors and accountants when necessary, including the execution and delivery of the annual audit letters.
- e. Assistance to the Port Manager with regard to Port Operations, including review of bond documents, construction contracts, security plans and other Port issues.
- f. Serving as general counsel to OHPA with regard to routine legal issues confronting OHPA, and providing liaison with the City of Fernandina Beach, Town of Callahan, Town of Hilliard, Nassau District Schools, Nassau County Board of County Commissioners, U.S. Army Corps of Engineers and the State of Florida.

4. PARTICULAR SERVICES:

I. ACTIONS IN ANTICIPATION OF BOARD MEETING

A. Meeting Agenda: Attorneys will assist OHPA and Staff, as needed, to develop and present legal issues to OHPA as required for the monthly meeting agenda. This will include a presentation and report for Agenda Item, "Report of Legal Counsel", on legal topics, actions taken, and issues then pending;

B. Attorneys will be prepared, on an "as needed" basis, to:

1. Provide basic advice, counsel, and research for individual OHPA members and staff on topics such as public records requests, contract negotiation, legal interpretations, RFI's and RFP's.
2. Meet with members of other governmental bodies and industry representatives, as directed by the OHPA.
3. Develop basic working outlines related to issues in future development projects.
4. Generally assist OHPA to develop its goals and articulate and implement its policies; a

II. BOARD MEETINGS: Attorneys will:

A. Attend all regular monthly and, as required, all workshop and specially called Meetings of OHPA;

B. Report on legal topics then pending, answer and respond to previous legal research questions and requests, and report on all arbitration, litigation, negotiation, or mediation in which OHPA is a participant;

C. Advise the Chair on procedural issues;

D. Provide legal advice and counsel to the OHPA on issues and topics which arise during meetings, including "Sunshine" law and Public Records issues.

III. SUNSHINE LAW AND PUBLIC RECORDS: Subsequent to elections and re-organization, as well as upon any material change in law, conduct an educational session on Sunshine Law and Public Records Law.

IV. REQUESTS FOR INFORMATION/REQUESTS FOR PROPOSALS: Assist OHPA, its Engineer, and Staff in preparation of RFI/RFP's and review of responses.

V. COMPREHENSIVE PLAN/PORT MASTER PLAN: At least some discussion has taken place regarding the development of a new Port Master Plan. This, in turn, will require coordination with the affected local governments. We will coordinate and assist OHPA with Port Master Plan/Port Element sections of Comprehensive Plan for City of Fernandina Beach and Nassau County, Florida, including elements related to expansion of port and logistical services to cover:

- a. Port pier/wharf;
- b. Utilities;
- c. Intermodal Container Transfer Facility;
- d. Warehouse;
- e. Logistics.

5. **BILLING FOR SERVICES:** The basic billing method and billing unit of the practice is a retainer/hourly billing paid on a billing cycle based on a calendar month. The basic

billing unit is \$350.00 per hour.

A. **BASIC SERVICES:** It is anticipated that, on a monthly basis, I/we will provide basic services to OHPA and devote:

1. One (1+/-) hour to preparation for the meeting and performing the services outlined at Items I & II, above;
2. Two (2+/-) hours to the regular monthly meeting;
3. One (1+/-) hours to meet with members and staff; and
4. Seven (7) additional hours provided on an “as needed” basis for Port Commissioners, Accountant, Port Operator, and others, **or** if Basic Services have not consumed ten (10) hours and the **ADDITIONAL SERVICES**, outlined below, are required..

We would offer to provide the basic services, outlined above, not to exceed ten (10) hours per month, for \$2,500.00 per month. The effective result is a reduced billing rate of \$250.00 for the first ten (10) hours provided. Clyde W. Davis will be the designated attorney to handle these matters for OHPA.

B. **ADDITIONAL SERVICES:** It is anticipated that OHPA will need services in addition to those outlined above or in excess of the ten (10) hours allocated. These services may fall within five (5) areas, depending on the policies and opportunities presented to OHPA and unknown future events:

1. Contract negotiations for Port Operations, including development and services at the current or future locations. This includes negotiations related to an up-dated operating agreement with Worldwide Group/Nassau Terminals resulting from their purchase of the operating company from Kinder Morgan;
2. In response to our RFI and any resulting ITN or RFP, contract negotiations for public-public or public-private partnership ventures in areas of warehouse, transportation infrastructure, power and utilities [including water, sewer, gas, and electricity], shipping and the like.
3. Dealing with OMB and US Customs and Border Protection on their request for a new facility, together with the potential for satellite facilities for NCSO, FBPD, DEP, USCG or other entities;
4. Development of a barge terminal;
5. Litigation, Mediation, or Arbitration on any number of subjects.

We offer to provide additional services, in excess of ten (10) hours per month/retainer, at the rate of \$350.00 per hour.

Some of these items are usually billed at hourly rates while others may be billed in percentage or fractions of value or at statutory rates. In some instances, it will be prudent to obtain outside counsel to provide services or to assist. We would offer to provide or

obtain these additional services **at our usual and customary rate as set forth above if total hours in any month exceed the ten (10) hours/month noted above for BASIC SERVICES**. Such charges will **not** be incurred nor obligated without prior approval of OHPA at a regular or special meeting or direction by OHPA Chairman.

C. **COSTS IN ADDITION TO FEES:** Costs of travel, meals, accommodations, required memberships [other than bar memberships] and fees are in addition to the fees charged for legal services. These will simply be billed as incurred. Travel will be billed and reimbursed at the federal rate. Meals and accommodations will be billed and reimbursed at the State per diem rate.

6. ADDITIONAL TERMS - PUBLIC RECORDS COMPLIANCE:

a. The Attorneys, as independent contractors, are required to comply with public records laws, and, specifically, to:

1. Keep and maintain public records required by OHPA, as the public agency to perform the services for OHPA;
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to OHPA as the public agency;
4. Upon completion of the contract, transfer, at no cost to OHPA, as the public agency all public records in possession of the contractor or keep and maintain public records required by OHPA, as the public agency, to perform the services. If the contractor transfers all of the public records to the agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all requirements of retaining public records. All records stored electronically must be provided to OHPA, as the public agency, upon request from the OHPA custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. Statement required by F.S. 119.0701(2)(a)

IF THE CONTRACTOR HAS A QUESTION REGARDING THE APPLICATION OF CHAPTER 119 FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF RECORDS AT 904/491-7422

Unfortunately, sad experience has shown that, once public records are requested, the individual may or may not pay the costs and expenses incurred in providing compliance with the statutory obligation. The law firm reserves the right to require a deposit in advance of any production of public records in order to defray the cost of compliance.

7. **COMPENSATION:** Attorneys shall be compensated by retainer in the amount of \$2,500.00 per month, together with amounts billed for additional services over and above the ten (10.0) hours of responsibility, all as set forth in Paragraph 3,4, and 5A and 5B of this Memorandum of Understanding. Attorneys will be reimbursed for normal expenses incurred or advanced on behalf of OHPA, all as set forth in item 5.C., above.

8. **INITIAL TERM/RENEWAL/TERMINATION:** The initial term of this agreement shall be from October 1, 2018, and shall continue until September 30, 2019. Attorney may, thereafter, be re-appointed annually in September of each year, at the pleasure of the Authority, and shall continue in service until a successor is appointed. Unless modified in writing, signed and adopted by both parties, the above stated terms shall apply.

9. **TERMINATION AS CONVENIENT:** Either party may terminate this agreement, at any time and with or without cause, as may be convenient. Termination shall be accomplished upon giving the other thirty (30) days written notice. Upon such termination all accrued fees and charges will become immediately due and payable. Upon termination all records shall be delivered by Attorney to OHPA.

10. **SEVERANCE PAY:** Pursuant to the provisions of Florida Statute, no severance pay will be due to Attorney if terminated for misconduct, as defined by F. S. 443.036(29).

Witness our hands and seals this _____ day of _____ 2018,
effective October 1, 2018.

OCEAN HIGHWAY AND PORT AUTHORITY

By: _____
Chairman

DAVIS, BROUSSARD, & STEGER, PLLC.

By: _____
Attorney, CLYDE W. DAVIS