



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

11.

12/22/2020

Subject:

Request for authorization for the Chair to execute a Legal Representation Agreement, and any amendments or supporting documentation, with Clifford Repperger, Esq., of White Bird, Attorneys at Law, for the limited representation by Clifford Repperger, Esq. of Brevard County at an administrative hearing on vest rights requested by Air Liquide Large Industries US, LP.

Fiscal Impact:

FY 20/21 - \$210/hr., Business Area 0030/Cost Center 210071

Dept/Office:

CAO on behalf of Planning & Development

Requested Action:

Request for the Chair to execute the Legal Representation Agreement, and any amendments or supporting documentation, with Clifford Repperger, Esq., of White Bird, Attorneys at Law, for the limited representation of Brevard County at an administrative hearing on vested rights requested by Air Liquide Large Industries US, LP.

Summary Explanation and Background:

Air Liquide is pursuing a vested rights determination regarding noise created by the business operated at 7007 North Courtenay Parkway, Merritt Island, Florida, which is in excess of the allowable limits permitted under Sections 46-130 and 62-2271 of the Brevard County Code of Ordinances. Air Liquide is represented by the law firm of Akerman LLP and has been served with both a Notice of Hearing and Statement of Violation as issued by Brevard County Code Enforcement on September 2, 2020 and September 1, 2020, respectively.

This request for legal services stems from Florida Bar and the Florida Attorney General opinions holding that a conflict of interest results when an attorney simultaneously serves as both a legal advisor and as an advocate before the same board. As such, the County Attorney's Office cannot serve as both legal advisor to the Board of County Commissioners and as an advocate on behalf of the Planning and Development Department. Therefore, the recommendation is that separate legal counsel be obtained on behalf of the Planning and Development Staff in order to advocate Brevard County's position at the administrative hearing on vested rights.

Clifford Repperger, Esq., of White Bird, Attorneys At Law, has provided the attached Legal Representation Agreement to provide limited representation to the County, specifically the Planning and Development Department, at the administrative hearing on vested rights. The Legal Representation Agreement contains a provision of informed consent and permission for Clifford Repperger, Esq., of White Bird, Attorneys At Law, to represent clients in entirely unrelated matters that may be adverse to the County pursuant to Rule 4-1.7(b) and/or Rule 4-1.8, Florida Bar Rules of Professional Conduct.

Staff is requesting authorization from the Board of County Commissioners to permit the Chair to execute an engagement agreement with Clifford Repperger, Esq., of White Bird, Attorneys at Law, and any required amendments or supporting documentation, for the limited representation on behalf of Brevard County at the administrative hearing on vested rights.

Clerk to the Board Instructions:



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

December 23, 2020

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item F.11., Authorization, for Legal Representation Agreement and Any Amendments or Supporting Documentation, with Clifford Repperger, Esq., of White Bird, Attorneys at Law, for Limited Representation of Brevard County at an Administrative Hearing on Vested Rights Requested by Air Liquide Large Industries US, LP

The Board of County Commissioners, in regular session on December 22, 2020, authorized execution of the Legal Representation Agreement and any amendments or supporting documentation, with Clifford Repperger, Esq., of White Bird, Attorneys at Law, for the limited representation of Brevard County at an administrative hearing on vested rights requested by Air Liquide Large Industries US, LP. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Donna Scott
Kimberly Powell, Clerk to the Board

Encl. (1)

cc: Planning and Development
Finance
Budget



p. 321.327.5580 | f. 321.327.5655
730 E. Strawbridge Avenue, Suite 209
Melbourne, FL 32901
whitebirdlaw.com

LEGAL REPRESENTATION AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of _____, 202____, (the "Effective Date") by and between **THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS** ("Client") and **WHITEBIRD PLLC** ("WHITEBIRD").

I. SCOPE OF AGREEMENT

A. Matter Involved

The Client has engaged WHITEBIRD (Clifford R. Repperger, Jr., Esq) to represent the Client's Planning and Development Department in a Petition for Vested Rights Determination filed by Air Liquide Large Industries, LP regarding property located at 7007 N. Courtenay Parkway, Merritt Island, FL 32953.

B. Limitations of Agreement

The provisions of this Legal Representation Agreement ("Agreement") shall apply only to the above defined Matter Involved unless otherwise specifically provided.

The Client understands the scope of representation has been limited to services of a strictly legal nature relating to the Matter and does not include financial advice, tax advice, advice having to do with bankruptcy, and any advice not directly related to the Matter. If the need arises, the Client agrees to seek independent tax advice on any matters involving taxability issues. The Client further agrees to have his or her tax advisor, accountant, or tax attorney cooperate with WHITEBIRD.

C. Effective Date

This Agreement shall be effective upon the later of the execution of this Agreement by the Client, or by WHITEBIRD.

This Agreement may be executed in as many counterparts as is deemed necessary or appropriate. Each such counterpart will constitute an original and all counterparts together will be deemed one Agreement between the Client and WHITEBIRD. Any copy of this Agreement executed or transmitted by facsimile or electronic mail shall be deemed an original for all purposes.

II. LEGAL FEES AND COSTS

A. Method of Determining Fees

The time expended by WHITEBIRD to perform the legal services for the Client in the Matter will be the primary basis for determining the total fees to be paid to WHITEBIRD. Unless the Client and WHITEBIRD agree otherwise in writing, WHITEBIRD will perform legal services on an hourly rate basis. The following hourly rates will apply:

Clifford R. Repperger, Jr./Partners	\$ 210.00/hour
Associates	\$ 150.00/hour
Paralegals	\$ 85.00/hour

B. Rates

The rates provided above shall remain fixed unless an increase is agreed to and approved by the Client in writing at least sixty (60) days' in advance of any rate increase becoming effective.

C. Fees, Charges and Expenses of Other Persons or Entities

The Client acknowledges that from time to time, as is deemed appropriate by WHITEBIRD with the prior written consent of Client persons or entities may be hired by WHITEBIRD to perform services related to the Matter. Such other persons and entities may include, but are not limited to, court reporters, investigators, process servers, forensic accountants, certified public accountants, appraisers, and expert witnesses. The Client authorizes WHITEBIRD to direct such persons to render statements for these services and expenses either directly to the Client or to WHITEBIRD. The Client agrees to pay these fees and expenses in the same manner and timely fashion as other fees and costs billed to the Client under this Agreement.

D. Additional Costs

The Client also acknowledges that WHITEBIRD will incur various costs in providing services to the Client. The Client agrees to reimburse WHITEBIRD for all out-of-pocket costs paid by WHITEBIRD or, if the Client is billed directly for these costs, to make prompt, direct payment to the originators of the bills. Such costs may include, but are not limited to, charges for serving and filing papers, courier or messenger services, recording costs and costs for certifying documents, deposition transcripts, computer research charges, witness fees, long distance telephone calls, photocopying expenses, facsimile transmission expenses, and travel expenses. Costs paid for by WHITEBIRD on behalf of the Client will be itemized on the monthly statements that are submitted to the Client. If any member of WHITEBIRD has financial sanctions imposed by the Court in WHITEBIRD's representation of the Client due to the Client's conduct, any financial sanction shall become additional costs due from the Client upon the entry of such sanctions by the Court.

E. Initial Retainers

The Client will not be required to pay an initial attorney fee and cost retainer for Clifford R. Repperger, Jr. (WHITEBIRD) to perform services pursuant to this Agreement.

F. Billing Statements

WHITEBIRD shall submit statements to the Client for legal services rendered by WHITEBIRD and for costs incurred by WHITEBIRD, from time to time as they accrue. Any questions regarding the statements shall be raised within thirty (30) days of receipt of said statements or the Client waives the right to challenge the reasonableness of the statement. WHITEBIRD's statements for fees and costs will be addressed to the Client and sent via email/electronic transmission. Hard copies of invoices and statements of account are available upon request. The Client will advise WHITEBIRD of the preferred email address(es) to forward invoices, which may be changed by the client at any time.

G. Payment

Prompt payment of all statements is a condition of WHITEBIRD's continued representation of the Client. Although payment may be made sooner, payment is due thirty (30) days from the statement date. If payment is not timely made, WHITEBIRD may withdraw from representation as provided in Article III below. This provision shall not limit WHITEBIRD's rights to pursue payment; WHITEBIRD shall have the right to pursue all legal remedies available.

The Client agrees that any suit, action or legal proceeding arising out of or relating to this Agreement shall be brought in the Circuit Court of Brevard County, Florida, and that each party shall bear its own fees and costs related to any action arising out of or relating to this Agreement regardless of whether either party is deemed to be the "prevailing" party.

H. Standardized Billing

It is the standard practice of WHITEBIRD to compute not less than one tenth (1/10) of an hour for any telephone call, review of any document, facsimile transmission, or electronic mailing associated with representing the Client in the Matter. Such additional time to perform any of the before mentioned activities will also be billed. Charges will be billed regardless of who first initiates communication.

I. Policy Compliance

All services performed and billing submitted by WHITEBIRD shall be done in accordance with the requirements of Brevard County Policy BCC-36; Legal Services with Outside Counsel. To the extent that this Agreement shall differ or conflict with Brevard County Policy BCC-36, Brevard County Policy BCC-36 shall control over the terms of this Agreement.

III. GENERAL MATTERS

No Guarantees

The Client acknowledges that WHITEBIRD has made no guarantees, warranties, and/or representations regarding the outcome of the Matter or about issues that may be decided by the Court. Statements that WHITEBIRD may make regarding the likely outcome or the range of possible outcomes are only opinions, not guarantees, about results.

The Client also acknowledges that WHITEBIRD has made no guarantees, warranties, and/or representations regarding the final or overall cost of the Matter to be pursued to its ultimate conclusion. WHITEBIRD pledges to work diligently to keep fees and costs reasonably consistent with providing the highest quality of work and fully representing the Client's interests in the Matter.

Likewise, the Client acknowledges that WHITEBIRD has made no guarantees, warranties, and/or representations regarding the time needed to complete the Matter or the date the Matter will be resolved. WHITEBIRD pledges to work diligently to resolve all matters in a timely fashion consistent with providing the highest quality work and fully representing the Client's interests in the Matter.

Estimates

The Client may occasionally request an estimate of fees and costs prior to entering into this Agreement or deciding a course of action during the representation of the Matter. An estimate, although based upon WHITEBIRD's professional judgment, will often be affected by factors outside WHITEBIRD's control and should not be considered a fixed rate, maximum fee, or guarantee.

Withdrawal

WHITEBIRD's representation of the Client is terminable at will by either party. Termination of the representation will not terminate the Client's obligation to pay fees and expenses incurred pursuant to this Agreement. If at any time the Client wishes to terminate WHITEBIRD's services, the Client shall notify WHITEBIRD in writing. Likewise, if at any time before completion of the Matter WHITEBIRD finds that WHITEBIRD is unable or unwilling to continue representing the Client, WHITEBIRD will notify the Client in writing. As soon as practicable after any such termination, WHITEBIRD will prepare a final bill and submit it to the Client.

WHITEBIRD shall have the right to withdraw from representing the Client if the Client does not make timely payments as required by this Agreement; if the Client has misrepresented or failed to disclose material facts to WHITEBIRD; or if the Client fails to follow WHITEBIRD's advice. In any of these events, the Client will execute such necessary documents as will permit WHITEBIRD to withdraw in an expeditious fashion. In the event of withdrawal, the Client shall be responsible for any costs, fees, or expenses incurred by WHITEBIRD on the Client's behalf consistent with this Agreement.

Disclosure of Agreement

The provisions of this Agreement, at WHITEBIRD's discretion, may be disclosed to the Court in connection with any application by WHITEBIRD for fees or services that may be rendered on the Client's behalf, and WHITEBIRD has the right to advise the Court of any amounts that WHITEBIRD has received on account for fees and any security that the Client has given to WHITEBIRD to secure WHITEBIRD's fees.

Severability

If any portion of this Agreement is held illegal, unenforceable, void, or voidable by any Court, each of the remaining terms hereof shall nevertheless remain in full force and effect as a separate contract. This Agreement shall be deemed modified and amended only to the extent necessary to render it valid and enforceable.

No Conflicts of Interest

WHITEBIRD has determined that WHITEBIRD presently has no conflicts of interest in representing the Client in the Matter. The Parties agree that WHITEBIRD's representation on this matter will not preclude Clifford R. Repperger, Jr. (or WHITEBIRD) from the representation of other clients on current or future matters which are adverse to Brevard County where such other matters are completely unrelated to the subject matter of this representation. Execution of this Agreement by the Client is intended to serve as informed consent for Clifford R. Repperger, Jr. (and WHITEBIRD) to represent clients that may be adverse to the Client on entirely unrelated matters pursuant to Rule 4-1.7(b) and/or Rule 4-1.9, Florida Bar Rules of Professional Conduct. WHITEBIRD shall advise the Client in writing of any representation of any party adverse to the Client on any unrelated matters which arise at any point during the duration of the representation on this matter.

Cooperation

The cooperation of the Client is very important. The Client must keep WHITEBIRD fully informed immediately of any change of address, phone number, employment and/or circumstances. Full disclosure to WHITEBIRD of all facts is essential to enable WHITEBIRD to properly and effectively represent the Client. The Client must promptly fill out and return all papers sent to the Client such as interrogatories, requests for information, requests for documents, etc. If the Client does not do so, WHITEBIRD shall have the right to withdraw from representing the Client for failure to cooperate.

Policy on Delegation

It is WHITEBIRD's policy to delegate work to the individual or individuals within WHITEBIRD who can do that work most efficiently and cost effectively for the Client. In addition to the primary attorney, other attorneys, paralegals, legal assistants, and clerks will work on the Matter. WHITEBIRD pledges to the Client to use its best judgment to determine who is most suited to work on the Client's case and the nature of the work to be performed.

Waiver of Trial by Jury

In the event that a dispute arises between the Client and WHITEBIRD, both parties hereby forever waive the right to a trial by jury.

Entire Agreement

This document constitutes the entire Agreement between WHITEBIRD and the Client for representation of the Matter. The Client acknowledges that WHITEBIRD has not made any oral representations, promises, or guarantees regarding this Agreement; and no other written document not referenced and incorporated herein controls the terms of WHITEBIRD's representation of the Client in the Matter.

Public Records

All documents, maps, drawings, data and worksheets prepared by WHITEBIRD for the Client under this Agreement shall be deemed public records pursuant to Chapter 119, Florida Statutes and shall be maintained as public records by WHITEBIRD. WHITEBIRD agrees to provide access to such public records on the same terms and conditions that Client provides such public records and at a cost that does not exceed that provided for pursuant to Chapter 119, Florida Statutes or otherwise provided by law. WHITEBIRD agrees to ensure that public records that are confidential and exempt from disclosure are not disclosed except as authorized by law. WHITEBIRD agrees that upon termination of this Agreement, all proprietary interest of Client in its business assets, tangible or intangible, including records, files, lists and information which WHITEBIRD deals with or develops during the course of this Agreement shall remain the sole and exclusive property of Client, and in no event shall WHITEBIRD acquire any interest therein. WHITEBIRD agrees that in the event of termination of this Agreement, WHITEBIRD shall promptly return at no cost to Client all public records documents in WHITEBIRD's possession at the time of termination. Duplicate public records that are exempt or confidential shall be destroyed by WHITEBIRD at the time of termination. Public records maintained by WHITEBIRD in an electronic format, shall be provided to Client in a format that is compatible with the information technology systems of Client at the time of termination.

IF WHITEBIRD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE WHITEBIRD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE BREVARD COUNTY RECORDS MANAGEMENT LIAISON OFFICER:

RECORDS MANAGEMENT LIAISON OFFICER
BREVARD COUNTY ATTORNEY'S OFFICE
2725 JUDGE FRAN JAMIESON WAY
BUILDING C
VIERA, FL 32940


321-633-2090

Duty to Read

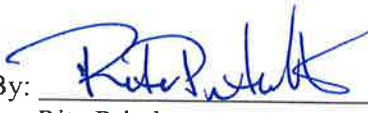
THIS IS AN IMPORTANT LEGAL DOCUMENT THAT SHOULD BE REVIEWED IN ITS ENTIRETY AND SHOULD NOT BE SIGNED UNLESS ITS TERMS AND PROVISIONS ARE FULLY UNDERSTOOD AND ACCEPTED. THE CLIENT UNDERSTANDS THAT THE CLIENT HAS THE RIGHT TO CONSULT INDEPENDENT COUNSEL IN CONNECTION WITH ANY OF THE TERMS OF THIS AGREEMENT PRIOR TO SIGNING IT. ALL LITIGATION IS BY ITS VERY NATURE COSTLY, UNCERTAIN, PERILOUS, AND NO RESULT CAN BE, NOR IS AT ANY TIME, GUARANTEED.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

WHITEBIRD:

By: 
Clifford R. Repperger, Jr. Esq.
Partner,
WHITEBIRD, PLLC

CLIENT:


By: 
Rita Pritchett
Chair,
BREVARD COUNTY BOARD OF COUNTY
COMMISSIONERS

Approved by the Board on:

Date: December 2, 2020

Date: December 22, 2020.

ATTEST:


Scott Ellis, Clerk to the Board

Approved as to legal form and content:

Attorney for the County