



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.11.

4/18/2023

Subject:

Legal Services Retainer Agreement with Weiss Serota Helfman Cole and Bierman, Re: Eminent Domain Services for *Brevard County v. Altman, et al.*; Case No. 05-2023-CA-15474

Fiscal Impact:

Attorneys' fees and actual costs as incurred, at the hourly rates of \$375 per hour for partners, \$300 per hour for associates, and \$125 per hour for paralegals, to be billed monthly and paid from the Beach Fund (1442).

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board of County Commissioners approve the attached Legal Services Retainer Agreement with the law firm of Weiss Serota Helfman Cole and Bierman for the provision of eminent domain services in the case of *Brevard County v. Altman, et al.*, and authorize the Chair to sign the Legal Services Retainer Agreement upon approval.

Summary Explanation and Background:

The County Attorney's Office seeks to retain eminent domain services from outside counsel in the case of *Brevard County v. Altman, et al.*, Case No. 05-2023-CA-15474 in the Circuit Court in and for the 18th Judicial Circuit, Brevard County. Very few law firms and private attorneys have significant experience representing public sector clients in litigation involving the acquisition of property rights through eminent domain. The County Attorney's Office has identified the Weiss Serota Helfman Cole and Bierman firm as having both the requisite subject matter expertise, and the availability to provide eminent domain services within the existing schedule of this pending litigation.

The firm will assign as lead counsel Alicia Gonzalez, Esq., a litigator with extensive experience representing public sector clients in contested eminent domain cases, supported by partners Mitchell Burnstein, Esq. and Peter Waldman, Esq. Biographies for these attorneys are attached. The firm's rates for this engagement represent a reduced governmental blended rate of \$375 per hour for the assigned partners, \$300 per hour for work performed by associates in the firm, and \$125 per hour for litigation/transactional paralegals. Actual costs will be billed in accordance with the requirements and limitations of BCC-36, Legal Services with Outside Counsel. The firm will bill on a monthly basis.

Clerk to the Board Instructions:

Please return a signed copy of the Legal Services Retainer Agreement to the County Attorney's Office.



April 19, 2023

MEMORANDUM

TO: Morris Richardson, County Attorney

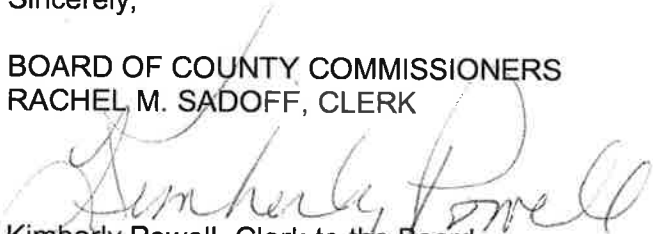
RE: Item F.11., Legal Services Retainer Agreement with Weiss Serota Helfman Cole and Bierman for Eminent Domain Services for Brevard County v. Altman, et al, Case No. 05-2023-CA-15474

The Board of County Commissioners, in regular session on April 18, 2023, approved and authorized the Chair to execute Legal Services Retainer Agreement with the law firm of Weiss Serota Helfman Cole and Bierman for the provision of eminent domain services in the case of Brevard County v. Altman, et al. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: Contracts Administration
Finance
Budget



Legal Services Retainer Agreement

Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the COUNTY) and Weiss, Serota, Helfman, Cole + Bierman, a law firm (hereinafter the Firm) enter into this legal services retainer agreement, as follows:

1. Scope of Engagement. The COUNTY has engaged the FIRM to provide legal services concerning the acquisition of the Property listed in Case Number 05-2023-CA-15474-XXXX-XX in the 18th Judicial Circuit for Brevard County, Florida by way of eminent domain proceedings ("Eminent Domain Services") to include the order of taking, any valuation trial and any appellate matters. Once the FIRM is engaged to render Services, the FIRM is expected to abide by the decisions of the COUNTY, as coordinated through the Brevard County Attorney's Office, concerning the objectives of this representation.
2. Cooperation. To enable the FIRM to represent the COUNTY effectively, the COUNTY agrees to cooperate fully with the FIRM in all matters relating to this agreement, and to disclose to the FIRM fully and accurately all facts and documents that may be relevant, or that we may otherwise request. The COUNTY agrees to make a designated representative reasonably available to attend meetings, conferences, hearings, and other proceedings.
3. Attorneys to be Assigned. It is agreed that Alicia Gonzalez, Esq. shall be lead counsel with support by partners Mitchell Burnstein, Esq. and Peter Waldman, Esq. Where feasible, the FIRM shall utilize associates and paralegals at the reduced rates listed below.
4. Hourly Rates. The FIRM will provide the Eminent Domain Services at the following billable rates:
 - a. Three hundred seventy-five dollars (\$375) per hour for Alicia Gonzalez, Esq., Mitchell Burnstein, Esq., and Peter Waldman, Esq. The County recognizes that additional attorneys may from time to time be needed to complete the work in a satisfactory manner. The FIRM may direct that particular work be done by another attorney within the FIRM at the same or lower hourly rate only following prior written approval of the County Attorney.
 - b. Three hundred dollars (\$300) for associates.
 - c. One hundred twenty-five dollars (\$125) per hour for litigation/transactional paralegals.

Any additional services, as may be required at the COUNTY's discretion, shall be charged separately and reimbursed on a pre-approved pass-through cost basis. It is our practice to charge for actual time expended on the COUNTY's behalf, but not less than 2/10ths of an hour for each activity. The rates shall remain firm for the duration of the representation on this matter; however, the COUNTY commission may approve a reasonable rate increase every fourth year in the course of the litigation, after at least sixty (60) days' advance written notice.

5. Costs. Our FIRM will coordinate with the COUNTY to reduce costs as reasonably as possible, using COUNTY obtained documents where feasible. In accordance with Brevard County Policy BCC-36, the COUNTY will pay for actual costs incurred for all non-incidental costs, such as, delivery charges, recording, title searches, court reporter expenses (including cost of transcript and court reporter's fee for attendance), court costs (such as filing fees, service of process, newspaper publication costs, subpoena costs, witness fees, recording fees, etc.), accounting and appraisal fees, experts' fees, trial/hearing exhibit costs, investigation costs, and applicable lobbyist registration fees. The FIRM agrees that computerized legal research will not be separately charged to the COUNTY. The FIRM agrees that all travel costs, expenses and fees must be consistent with section 112.061, Florida Statutes to be eligible for reimbursement. The COUNTY does not authorize first class travel and requests that the lowest rates possible be obtained. Reasonable mileage will be reimbursed at the statutory rate. If travel time is devoted to working for one or more Clients, the COUNTY should only be billed for the proportional time related to the COUNTY's matter. Food and beverage expenses are limited to the current rate of compensation established by law or county resolution or ordinance.

6. Payment of Fees and Costs. Fees for services will be made in accordance with Administrative Order AO-33 and the Local Government Florida Prompt Payment Act. The FIRM will promptly provide a W-9 and any other necessary information required to establish the FIRM as a vendor for the County. The FIRM's invoices will be submitted to the COUNTY on a monthly basis and each invoice will be due and payable from the COUNTY when rendered. The COUNTY must understand that if any invoice remains unpaid for more than 45 days after it is rendered, we reserve the right, in our discretion (subject to court approval, if necessary), to cease to provide further legal services to the COUNTY. The COUNTY will, however, be liable to the FIRM for the payment of any fees earned and any costs incurred by the FIRM to that time, together with any applicable taxes. In the event we are ultimately required to bring suit to collect any unpaid fees and costs, the Parties will first use the procedures at AO-33 and section 218.76, Florida Statutes, to informally resolve the matter. Venue shall be proper in Brevard County, Florida and each party shall be responsible for their own fees and costs, and BOTH PARTIES AGREE TO WAIVE, AND HEREBY WAIVE, ANY RIGHT TO A JURY TRIAL. The FIRM understands that the COUNTY is subject to Florida's broad public records laws and that the COUNTY has the right to obtain any and all files, papers and other property coming into our possession in connection with our engagement without any liability to the COUNTY.

7. Withdrawal from Representation. The FIRM reserves the right to withdraw from representing the COUNTY if it has misrepresented or failed to disclose material facts to the FIRM, or if the FIRM disagrees about the course of action which should be pursued.

8. Representation of Other Clients. The FIRM is bound by rules of legal ethics not to represent any client if the representation of that client will be directly adverse to the interests of another client, unless each such client consents to such representation after consultation. If this letter is addressed to more than one person, the Client's signature of this letter will constitute such consent with respect to the matter or matters specifically described in the paragraph of this letter titled "Scope of Engagement."

9. Fees for Other Services. In the event the COUNTY asks the FIRM to render legal services with respect to other matters, in the absence of a written agreement specifically addressing that representation, the other matters will be handled on an hourly basis, and fees and costs will be payable at our customary hourly rates for such services, with no maximum or minimum amounts.

10. Commencement of Representation. If the foregoing is agreeable to the COUNTY, please have it acknowledge its understanding and agreement by signing this letter and delivering it to the FIRM.

11. Settlement Authority. Counsel will not settle County's claim without approval of COUNTY, who will have the absolute right to accept or reject any individual settlement offer. It is the policy of the Brevard County Attorney's Office to keep the Board of County Commissioners apprised of major developments in pending litigation. The County Attorney and assigned Assistant County Attorney will be involved in any strategy or settlement discussions or proceedings. All demands, counter-demands and in-court pronouncements regarding settlements should be discussed with the County Attorney for scheduling and presentation to the Board of County Commissioners at an executive session. Any final settlement of any matter is subject to the express approval of the County Attorney and the Board of County Commissioners. Alternate dispute resolution may be considered for all litigation and disputes.

12. Points of Contact. COUNTY designates County Attorney Morris Richardson and Assistant County Attorney Christine M. Schverak as the authorized representatives to direct the FIRM and to be the primary individuals to communicate with the FIRM regarding the subject matter of the FIRM's representation of COUNTY under this Agreement. This designation is not intended to preclude communication between the FIRM and other representatives of COUNTY. The FIRM designates Ms. Alicia Gonzalez to serve as the FIRM's representatives.

13. Insurance. The FIRM shall procure and maintain during the entire period of performance under this agreement, the types of insurance specified below:

- a. **General Liability.** The FIRM shall maintain adequate General Liability Insurance for bodily injury and property damage, including but not limited to premises operation, products and completed operations, personal and advertising injury, and contractual liability with minimum limits of \$1,000,000 per occurrence.
- b. **Automobile.** The FIRM shall maintain adequate Automobile Liability Insurance for all owned, hired, or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a minimum of \$1,000,000 per occurrence, combined single limit for bodily injury and property damage.
- c. **Workers' Compensation.** The FIRM shall maintain adequate Workers' Compensation and Employer's Liability coverage as required by statute and in full compliance with the applicable laws of the State of Florida; and Employer's Liability coverage in a minimum amount of \$500,000 per accident for injury / disease.
- d. **Professional Liability.** The FIRM agree to collectively maintain Professional Liability Insurance coverage with the limits of liability provided by such policy no less than Five Million Dollars (\$5,000,000) for each claim with a maximum deductible of Two Million Dollars (\$2,000,000), unless otherwise approved in advance by the County's Risk Management Division (RMD). Coverage will be written on a "claims-made" basis. This collective insurance shall be maintained continuously in force for a minimum of two (2) years following the expiration or termination of this Agreement, and shall annually provide COUNTY Risk Management Division (RMD) with evidence of continuous coverage. The obligations of this paragraph shall survive the expiration or termination of this Agreement.
- e. **All Policies.** Excepting the Professional Liability Insurance, all policies of insurance must be written on an 'occurrence basis' and must be maintained for the duration of the contract. These are required minimum insurance requirements and will not in any way limit COUNSEL's liability under this contract. Such insurance coverage shall be on a coverage form acceptable to COUNTY and issued by companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. In addition, each such insurer shall have and maintain throughout the period for which coverage is required a minimum A.M. Best Company Rating of "A-" and a minimum Financial Size Category of "VII." COUNSEL shall submit a Certificate of Insurance (COI) demonstrating evidence of coverage. COUNSEL shall provide the County with an updated Certificate of Insurance at each renewal of the coverages during the agreement.

14. **E-Verify and Scrutinized Companies.** The FIRM understands that COUNTY requires registration with the U.S. Department of Homeland Security's E-verify system by all of its vendors,

and will provide acceptable evidence of their enrollment upon request. The FIRM likewise will comply with the scrutinized company statutes at section 287.135, Florida Statutes.

15. Public Records. Florida has very broad public records laws. The FIRM shall comply with all applicable requirements of the Florida public records act with respect to the FIRM's records relating to, arising from, or in connection with this Agreement.

IF COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COUNSEL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (321) 633-2090, Ms. Jacquelyn Guadalupe, 2725 Judge Fran Jamieson Way, C-308, Viera Florida 32940.

Duties. To the extent that the FIRM will act on behalf of the COUNTY, as provided under section 119.0701, Florida Statutes, the FIRM shall:

(a) Keep and maintain public records required by the COUNTY to perform the services under this agreement.

(b) Upon request from the COUNTY's custodian of public records, provide the COUNTY 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 by Florida law.

(c) Ensure that 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 this agreement and following completion of this agreement if COUNSEL does not transfer the records to the COUNTY.

(d) Upon completion or termination of this Agreement, transfer, at no cost, to the COUNTY all applicable public records in possession of the FIRM and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the COUNTY upon request in a format that is compatible with the information technology systems of the COUNTY.

(e) The failure of the FIRM to comply with the provisions of this section shall constitute a material breach of this Agreement entitling the COUNTY to exercise any remedy provided in this Agreement or under applicable law.

(f) COUNTY understands that much of the FIRM's files and documents compiled in connection with their investigation and prosecution of this matter may constitute work product and property of the Firm. Notwithstanding the foregoing, the Firm agrees to comply with all requirements of Chapter 119, Florida Statutes, as may be applicable.

Procedure. A request for public records regarding this Agreement should be made directly to the COUNTY, who will be responsible for responding to any such public records requests. The FIRM will promptly forward any public records request that it receives to the COUNTY point of contact. The FIRM will provide any requested records to the COUNTY to enable the COUNTY to timely respond to the public records request.

16. Assignment. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by the FIRM without prior written consent of the County Attorney. If any of the law firms violate this provision, the COUNTY shall have the right to immediately terminate this agreement for material breach.

17. Qualifications. The FIRM represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. The FIRM agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services in litigation of this nature.

18. Third Party Beneficiaries. Neither the FIRM nor the COUNTY intend(s) to directly or substantially benefit a third party by this Agreement. Therefore, the FIRM and the COUNTY acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

19. Sovereignty. Except with regard to the contractual obligations expressly undertaken herein, the COUNTY fully preserves its sovereign immunity.

20. Entire Agreement. This Agreement contains the entire agreement between the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

21. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, then the remainder of that provision and of the entire Agreement will be severable and remain in effect. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of the parties.

22. Power of Attorney. The COUNTY grants the FIRM's counsel a limited power of attorney that is limited to matters that are necessary to pursue the Litigation so that, subject to any express limitations stated above, the FIRM's attorneys have full authority to prepare, sign, and file all pleadings. The FIRM is also authorized and empowered to act as the COUNTY's negotiator in any and all negotiations concerning the Litigation. To be clear, all decisions regarding final resolution of the Litigation, including settlement, are within the sole power of the COUNTY. The FIRM will take no action to settle the COUNTY claim without prior express written approval of the COUNTY (acting through the Board of County Commissioners.)

23. Audit. The COUNTY shall have the right to examine and audit books, records, other documents and supporting material for the purpose of evaluating compliance with this Agreement, and the fees charged to the COUNTY. Such books and records shall be preserved

and made available to the COUNTY during business hours for examination, audit or reproduction. The COUNTY may employ, at its sole discretion, its internal audit department or independent outside auditors for purposes of accomplishing this audit. If an error is found that exceeds ten percent (10%) of the FIRM's total billings to the COUNTY for the year in which the audit is conducted, then the FIRM shall pay the cost of the audit. The FIRM shall maintain records pertinent to the litigation costs and expenses for a period of five (5) years after expiration or termination of this Agreement, or, if any audit has been initiated and audit findings have not been resolved at the end of the three years, such books and records shall be retained until resolution of the audit findings. The obligations of this paragraph shall survive the expiration or termination of this agreement.

24. **Effective Date:** This agreement is effective upon the date last signed below.

25. **Counterparts and Authority.** This Agreement may be executed in counterparts all of which, taken together, shall constitute one and the same agreement. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that party to the obligations stated herein.

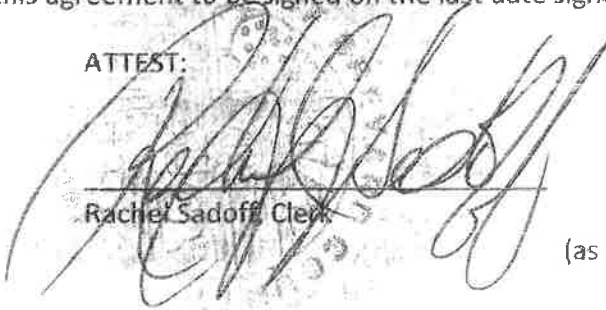
26. **Conflict Resolution.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with interpretation or enforcement of this Agreement shall be in the state courts of the Eighteenth (18th) Judicial Circuit in and for Brevard County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court for the Middle District of Florida. Any and all disputes, controversies, claims or demands arising out of or relating to (i) this Agreement, (ii) any provision of this Agreement, (iii) the provision of services by the FIRM to the COUNTY; and (iv) the relationship between the Parties, whether in contract, tort, or otherwise, at law or in equity, for damages or any other relief, shall be resolved in the courts of Brevard County. Each party will be responsible for its own attorney fees and costs. Each party waives its right to a jury.

27. While this Agreement remains in effect, the FIRM (individually, collectively, or in any combination) shall not act as counsel in any lawsuit or other adversarial proceeding in which the COUNTY is named as an adverse party or in which the FIRM takes or may take a position adverse to the COUNTY. The Firm further agrees that the FIRM (individually, collectively, or in any combination) and its employees shall not have or hold any continuing or frequently recurring employment or contractual relationship substantially antagonistic to or incompatible with COUNSEL's loyal and conscientious exercise of judgment related to their performance under this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representative, have caused this agreement to be signed on the last date signed below.

ATTEST:



Rachel Sadoff, Clerk

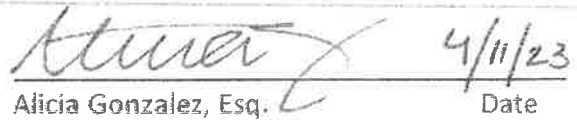
BREVARD COUNTY, Florida


By: _____

Rita Pritchett, Chair

(as approved by the Board on April 18, 2023)

WEISS SEROTA HELFMAN COLE & BIERMAN



Alicia Gonzalez, Esq. 4/11/23
Date