



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

I.1.

10/12/2021

Subject:

Recommendation of Legal Counsel Services for the Brevard County Charter Review Commission (CRC)

Fiscal Impact:

- Charter Review Commission Meetings - All inclusive rate of \$500.00 per meeting
- Litigation only Hourly Rate - \$250.00
- CRC approved tasks outside of CRC Meetings Hourly rate - \$225.00
- Necessary and Reasonable Legal Expenses incurred on behalf of the CRC at cost (i.e. court costs, filing fees, etc...)

Budget for Legal Counsel Services is \$50,000.00 (Total Cost of Contract will be based on total number of meetings attended, and any hours of legal counsel (litigation or CRC approved tasks) during the Charter Review Commission).

Funding is currently budgeted under Fund and Cost Center 0001-200540

Dept/Office:

Central Services Department / County Manager's Office

Requested Action:

It is Requested the Board of County Commissioners:

- Accept the recommendation of the Brevard County Charter Review Commission to enter into a contract for Legal Services with Weiss Serota Helfman Cole & Bierman P.L.;
- Authorize the BoCC Chair to execute a contract for services upon review by the County Attorney's Office, Risk Management, and Purchasing Services; and
- Authorize the BoCC to execute any necessary Contract Amendments or Extensions upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services.

Summary Explanation and Background:

On May 4, 2021, the Board authorized Purchasing Services to develop and advertise a Request for Qualifications (RFQ) for Legal Counsel Services to Serve as Counsel for the Brevard County Charter Review Commission.

On August 12, 2021 the Charter Review Commission approved the RFQ to obtain legal counsel services. The RFQ was advertised via Florida Today, DemandStar and Vendorlink on Thursday August 19, 2021 with a due date of September 10, 2021.

Purchasing Services received 5 responses to the RFQ. The responses were presented to the Charter Review

Commission during their regularly scheduled meeting on September 23, 2021 for evaluation and ranking.

The Charter Review Commission, acting as the selection committee, evaluated and ranked all the responses received. As indicated on the attached consolidated score sheet, the selection committee then motioned to enter into negotiations with Weiss Serota Helfman Cole & Bierman Law Firm as the highest ranked firm (receiving 8 of 13 first place votes and five second place votes). The motion passed unanimously.

The Charter Review Commission, acting as the negotiation committee, then entered into negotiations with Weiss Serota Helfman Cole & Bierman Law Firm and upon completion of negotiations, motioned to accept the negotiated rates as outlined below; the motion passed unanimously.

Negotiated Rates:

Charter Review Commission Meetings - All-inclusive rate of \$500.00 per meeting

Litigation only Hourly Rate - \$250.00

CRC approved tasks outside of CRC Meetings Hourly rate - \$225.00

Necessary and Reasonable Legal Expenses incurred on behalf of the CRC at cost (i.e. court costs, filing fees, etc...)

Based on the information above the Charter Review Commission recommends that the Board accept and approve their recommendation to award the contract for Legal Counsel Services to the Brevard County Charter Review Commission to the law firm of Weiss Serota Helfman Cole & Bierman, P.L.

Clerk to the Board Instructions:

None



October 13, 2021

M E M O R A N D U M

TO: Steve Darling, Central Services Director

RE: Item I.1., Recommendation of Legal Counsel Services for the Brevard County Charter Review Commission (CRC)

The Board of County Commissioners, in regular session on October 12, 2021, accepted the recommendation of the Brevard County CRC to enter into a contract for Legal Services with Weiss Serota Helfman Cole and Bierman P.L.; authorized the Chair to execute a contract for services upon review by the County Attorney's Office, Risk Management, and Purchasing Services; and authorized the Chair to execute any necessary Contract Amendments or Extensions upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ns

cc: County Manager
County Attorney
Risk Management
Purchasing Services
Finance
Budget

INDEPENDENT CONTRACTOR PROFESSIONAL SERVICES EMPLOYMENT CONTRACT

THIS INDEPENDENT CONTRACTOR PROFESSIONAL SERVICES EMPLOYMENT CONTRACT, hereinafter referred to as the "Contract", is by and between the Board of County Commissioners of Brevard County, Florida, (hereinafter "COUNTY") on behalf of the 2021-2022 Brevard County Charter Review Commission (hereinafter "CLIENT" or "CRC") and the law firm of Weiss Serota Helfman Cole & Bierman, (hereinafter "LAW FIRM" or "ATTORNEY").

IN CONSIDERATION of the mutual covenants and promises herein contained and the mutual exchange of other good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed, promises and covenanted as follows:

Section 1. SCOPE OF SERVICES. COUNTY does hereby agree to employ the LAW FIRM, and the LAW FIRM does hereby agree to accept employment by the COUNTY in the capacity of "General Counsel" to the CLIENT in accordance with Exhibit A, a copy of which is attached hereto and incorporated by this reference, and with all terms and conditions as set forth in this Contract, the Request for Qualifications RFQ 2-21-14 and LAW FIRM's response which are incorporated herein by this reference and Section 7.4 of the Brevard County Charter. As part of this employment LAW FIRM shall complete and provide all required forms and documentation at the request of COUNTY.

Section 2. TERM. The term of employment of the LAW FIRM under this Contract shall commence on October 13, 2021 and terminate on October 17, 2022 unless the term of employment of the LAW FIRM is modified pursuant to Section 11 or terminated pursuant to Section 3 of this Contract.

Section 3. TERMINATION. Either CLIENT or the LAW FIRM may terminate this contract at any time upon providing thirty (30) days written notice to the other party. However, at CLIENT's option, and if so requested by CLIENT, the LAW FIRM shall continue to provide the professional services contemplated herein pending the appointment/employment of his/her successor if such appointment/employment requires more than thirty (30) days, and provided that CLIENT exerts reasonable efforts during said thirty (30) days to seek and select said successor. In addition, the parties may terminate this Contract at any time and on any agreed basis by mutual consent of all parties, the same reduced to writing and properly executed by all parties hereto. Likewise, the term of this Contract may be extended at any time by mutual consent of all parties hereto, the terms of such extension being reduced to writing and executed by all parties hereto.

Section 4. LAW FIRM SERVICES.

- (a) All legal services to be performed by the LAW FIRM hereunder shall be rendered at the request or direction of the majority vote of the members of the

CLIENT. The parties specifically recognize and understand that Paul Gougelman is a member of the LAW FIRM, and that several members of the LAW FIRM possess the requisite skill, competence and exposure in administrative/governmental practice. Specifically, therefore, and notwithstanding any of the foregoing, the rendition of services hereunder by an attorney from the LAW FIRM other than Paul Gougelman shall not be prohibited, and shall be deemed to be in accordance with the provisions of Section 112.313, Florida Statutes, as amended including, litigation and support services otherwise described and permitted by the aforesaid Statute, to the extent that statute is applicable.

- (b) Paul Gougelman, or in his/her absence another member of the LAW FIRM, agree to attend all CLIENT regular and special meetings of the CLIENT, and to attend any meeting of any official CLIENT board or committee when specifically requested to attend, and to perform any and all legal services at the request of the CLIENT, of whatever kind or nature, including office practice and litigation, required or requested of the LAW FIRM by the CLIENT, on behalf of the CLIENT, and the agents, servants and/or employees thereof, when same are acting in their official capacity(s) on behalf of the CLIENT during the term of this Contract.
- (c) Client acknowledges that the LAW FIRM represents several governmental agencies and special districts. The parties agree that it is important that the LAW FIRM be independent and impartial in order to properly conduct its services to the CLIENT. Therefore, the LAW FIRM shall not represent any other party with interests adverse to the CLIENT or the COUNTY, nor act as counsel in any lawsuit, other adversary proceeding, or any proceeding in which the LAW FIRM takes an adverse position to the CLIENT or the COUNTY. In the event of a conflict, the LAW FIRM shall have the right to resolve such conflicts as it deems fit, including withdrawal or consistent as provided for by the applicable Rules Regulating the Florida Bar, Rules of Professional Conduct.

Section 5. PROFESSIONAL FEES. For attendance at all CLIENT meetings approved by a majority vote of the members of the CLIENT, the COUNTY shall compensate the LAW FIRM at a flat rate of \$500.00 per meeting (which is inclusive of all travel and hourly rates of LAW FIRM staff). The COUNTY shall also compensate the LAW FIRM on an hourly basis of \$225.00 per hour for time spent on CLIENT requested tasks as approved by a majority vote of the members of the CLIENT. For all CLIENT litigation approved by a majority vote of the members of the CLIENT, the COUNTY shall compensate the LAW FIRM at the rate of \$250.00 per hour. All rates are as set forth in Exhibit B, a copy of which is attached hereto and incorporated by this reference.

Section 6. COSTS AND EXPENSES. The LAW FIRM shall be permitted to submit to the COUNTY, on a monthly basis for payment by COUNTY to LAW FIRM, an invoice for all reasonable and necessary legal expenses incurred on behalf of the CLIENT, such as court costs and filing fees, photo-copying and facsimile costs not performed by the CLIENT or the COUNTY. The LAW FIRM may also request these costs be paid directly by COUNTY to the billing party, agency or vendor upon their original invoice or billing statement rather than on a reimbursement basis.

Section 7. INSURANCE.

- (a) The LAW FIRM shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Contract, professional liability insurance in an amount not less than One Million and 00/100 Dollars (\$1,000,000) total limit with the maximum deductible of Ten Thousand and 00/100 Dollars (\$10,000), annual aggregate.
- (b) Such policy or policies shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Brevard County, Florida.
- (c) The COUNTY and the CLIENT shall be notified by the insurance carrier in the event that the LAW FIRM's professional liability insurance policy is cancelled, has lapsed or that a premium that is due and owing has not been paid such that the carrier intends to cancel or permit the policy to lapse and shall do so within thirty (30) days of any the aforesaid events.

Section 8. E-VERIFY

- (a) In accordance with Chapter 448.095, Florida Statutes, LAW FIRM shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LAW FIRM during the term of this Contract; and
- (b) LAW FIRM shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and
- (c) LAW FIRM agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the LAW FIRM's enrollment in the program. This includes maintaining a copy of proof of the LAW FIRM's and subcontractors' enrollment in the E-Verify Program.

- (d) Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- (e) A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the LAW FIRM hires or employs a person who is not eligible for employment.
- (f) Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 9. PUBLIC RECORDS.

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall immediately notify the LAW FIRM of the request and the LAW FIRM shall provide the records to the COUNTY or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the COUNTY can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. The LAW FIRM may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the COUNTY's public records custodian designated below.

If LAW FIRM fails to provide the requested public records to the COUNTY within a reasonable time, the LAW FIRM may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties pursuant to Section 119.10, Florida Statutes. LAW FIRM's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If LAW FIRM claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information.

Should the COUNTY face any legal action to enforce inspection or production of the records within the LAW FIRM's possession and control, the LAW FIRM agrees to indemnify the COUNTY for all damages and expenses, including attorney's fees and costs. The LAW FIRM shall hire and compensate attorneys to represent the LAW FIRM and COUNTY in defending such action. The LAW FIRM shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

IF THE LAW FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LAW FIRM'S DUTY

TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:NADIA FOLL, , 2725 JUDGE FRAN JAMIESON WAY, BUILDING C, SUITE 308, VIERA, FLORIDA 32940; [EMAIL: Katherine.williams@brevardfl.gov](mailto:Katherine.williams@brevardfl.gov); (321) 633-2090.

Section 10. RIGHT TO AUDIT RECORDS.

In the performance of this Contract, the LAW FIRM shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the LAW FIRM in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The LAW FIRM shall retain all documents, books and records for a period of five years after termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and chapter 119, Florida Statutes. All records or documents created by or provided to the LAW FIRM by the COUNTY in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the information technology systems of the COUNTY.

The LAW FIRM shall ensure that public records which 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 and following termination of the Contract if the LAW FIRM does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the LAW FIRM may transfer, at no cost to the COUNTY, all public records in possession of the LAW FIRM. If the LAW FIRM transfers all public records to the COUNTY upon termination of the Contract, the LAW FIRM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Section 11. MISCELLANEOUS PROVISIONS.

- (a) The LAW FIRM agrees that it is familiar with and will comply with the requirements of Chapter 112, Florida Statutes. The LAW FIRM shall likewise be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable and shall provide upon request by the COUNTY proof of such compliance.
- (b) The work product generated and produced by the LAW FIRM pursuant to this Contract shall belong to the CLIENT and the COUNTY.

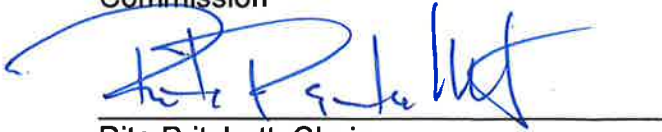
- (c) This Contract shall be deemed to have been executed and entered into within the State of Florida and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
- (d) Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
- (e) Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The COUNTY shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Contract by the COUNTY.
- (f) This Contract sets forth the entire agreement between the parties hereto. Any prior conversations or writing are merged herein and extinguished. No subsequent amendment to this Contract shall be binding upon any of the parties hereto unless reduced to writing and properly signed and executed. If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed.

Board of County Commissioners of
Brevard County, Florida, by and through
its agent, the 2021-22 Charter Review
Commission

LAW FIRM



Rita Pritchett, Chair
(As approved by the Board on: October
12, 2021)

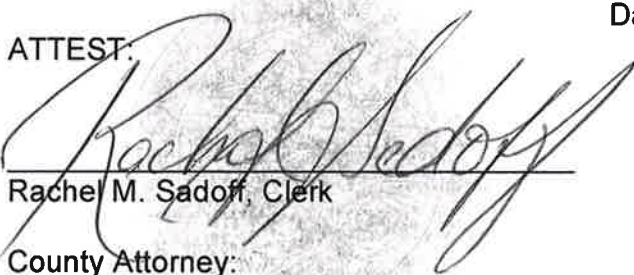


Joseph H. Senota, Member

ATTEST:

Date:

10/25/21



Rachel M. Sadoff, Clerk

County Attorney:



Eden Bentley

Abigail Jorandby

EXHIBIT A
2021-2022
CHARTER REVIEW COMMISSION
REPRESENTATION AGREEMENT
SCOPE OF SERVICES

The Law Firm shall provide legal advice and professional services to the Charter Review Commission (CRC) of the Brevard County Home Rule Charter. More specifically, the Attorney for the Law Firm shall:

- A. Attend all meetings of the CRC. Attendance at meetings of a subcommittee of the CRC shall not be required unless a subcommittee requests such attendance and it is approved by a majority vote of the CRC. Attendance at subcommittees may be by phone or other electronic format.
- B. During meetings of the CRC the Attorney:
 - Shall respond to questions by any member of the CRC regarding any charter provision or any issue which may be raised under the charter, or under any proposed amendment to the charter.
 - Shall provide responses to questions may be in the form of legal advice or practical suggestions for phrasing of a proposed charter amendment.
 - When questions cannot be answered fully during a CRC meeting, the attorney shall review the question at the conclusion of the meeting and shall prepare an answer, which may be distributed in writing to all CRC members and Support staff at the next CRC meeting.
 - When needed, the attorney may ask questions of the CRC members or the public during the course of the meeting to ascertain more clearly the intent of a proposal or public comment to more clearly define the intent of the proposed charter amendment of public comment.
 - During any public hearing or other type of public meeting, assist the CRC in answering questions from members of the public, to the extent that the attorney is requested to do so. The attorney shall not be required to justify or defend any proposed amendment to the charter and may decline to answer a question, which calls for a personal or "political" opinion as distinguished from a legal opinion.
 - Provide practical advice based on familiarity with the operation of State and Local government in Florida but shall refrain from giving personal and or "political" advice as distinguished from a legal opinion on any issue.

C. Following referral by the CRC of a proposed amendment to the Attorney:

- Draft or assist in drafting proposed charter amendments and proposed ballot language for amendments.
- Assist the sponsor of proposed amendments with a statement of justification for a proposed amendment; however, the attorney shall not be solely responsible for preparing a statement of justification for a proposed amendment.
- Render opinions as to whether a proposed charter amendment is constitutional or consistent with general or special law.

D. The Attorney shall comply with the directions of the CRC with respect to:

- Contact by individual members of the CRC, officers or employees of the County, or the public regarding the charter or proposed amendments to the charter.
- Handling of any proposed amendment to the charter in advance of a decision by the CRC that the proposed amendment should be referred to the attorney.
- The preparation and distribution of written opinions and other written materials.
- Preparation of material and information for the "Independent Review of Charter Amendments" as specified in Section 7.4.1 of the Brevard Home Rule Charter.
- The format and content of the final report to the Brevard County Board of County Commissioners.
- Other requests of the CRC, which its members may approve by majority vote or as otherwise required by the rules.

EXHIBIT B
RATE SCHEDULE

A. Identification

Client: BREVARD COUNTY CHARTER REVIEW COMMISSION

Law firm: WEISS SEROTA HELFMAN COLE & BIERMAN

B. Rates:

Cost Per Meeting: Flat Rate of \$500.00 per meeting (includes hourly rates for lawyers and travel)

Cost Per Hour for Litigation: \$250.00

Cost Per Hour for Lawyers Performing Legal Tasks Excluding Meetings: \$225.00



Attorney to Serve as Legal Counsel to the Brevard County Charter Review Commission

RFQ-2-21-14

SELECTION COMMITTEE CONSOLIDATED EVALUATION SCORESHEET

Any questions regarding the content of this notice should be directed to Summer Wyllie at (321) 817-7390

MEETING DATE: September 23, 2021

POSTING DATE: September 23, 2021 Through September 30, 2021 at 5:00 PM POSTED BY: Summer Wyllie

▼ Committee Member ▼	Gray Robinson, P.A.	Waugh Grant, PLLC	Weiss Serota Helfman Cole & Blerman, P.L.	Paul, Elkind, Branz & Paul, LLP	Shepard, Smith Kohlmyer & Hand, P.A.
Jordan Chendler	2	3	1	5	3
Robin Fisher	1	2	2	2	3
Mike Haridopoulos	1	3	2	5	3
Tom Jenkins	2	5	1	3	4
Vic Luebker	2	5	1	4	3
Kendall Moore	3	3	1	3	2
Marcia Newell	2	5	1	3	4
Cole Oliver	3	3	2	5	1
Billy Prasad	3	4	1	5	2
Marie Rogerson	4	1	2	5	3
Sue Schmitt	4	5	2	3	1
Blaise Trellis	2	5	1	4	3
Bob White	2	4	1	4	3
TOTAL POINTS	31	48	18	51	35
RANKING	2	4	1	5	3

*** Motion by Committee Member Bob White. Second by Sue Schmitt to recommend award of the highest ranked firm, Weiss Serota Helfman Cole & Blerman, P.L., at a rate of \$225/hr for executive work, \$250/hr for litigative work, and \$500 flat fee per CFC meeting; to the Brevard County Board of County Commissioners on October 12, 2021. Motion passed unanimously.

Brevard County encourages prompt and fair handling of all complaints and disputes with the business community. Filing of any disputes and appeals shall be in accordance with procedures specified in bid documents.

August 2021