

December 3, 2019

Via Electronic Mail Only (storres@alachuacounty.us)

Ms. Sylvia E. Torres  
Alachua County Attorney  
12 SE 1st Street  
Gainesville, FL 32601

RE: Regional Event Center Expression of Interest

Dear Ms. Torres:

Bryant Miller Olive P.A. ("BMO") would be pleased to assist the County Attorney with the planning, negotiating, drafting and executing of an agreement to locate, construct and operate a regional event center in Alachua County, Florida (the "Project").

For more than two generations, BMO has been at the forefront of advising Florida governments on complex projects that depend on effective interaction between the public and private sectors. From the redevelopment of South Beach in the 1980's to advising the *Partnership for Public Facilities and Infrastructure Act Guidelines Task Force* concerning the current statewide P3 statute, § 255.065, Florida Statutes, BMO has repeatedly demonstrated leadership in developing and applying new project delivery methods to meet government clients' most pressing needs.

**Our Qualifications and Experience.** Whether the Project is developed within the Celebration Pointe community development district ("CDD") or elsewhere, the County Attorney will benefit from BMO's government-centric expertise. In the past five years, BMO has provided legal services for over 100 special district and/or special assessment financings in the approximate amount of \$1.7 billion, many of which were CDD financings in Florida. Most recently, BMO's expertise in the use of assessments to meet government's needs was validated in *Morris v. City of Cape Coral*, 163 So. 3d 1174 (Fla. 2015). Our project finance expertise is complemented by our real estate, local government, and public procurement practice areas.

BMO's experience representing Florida governments on stadium- and arena-related projects includes:

City of Miami (Miami Marlins)

City of Bradenton (Pittsburgh Pirates)  
City of Clearwater (Philadelphia Phillies)  
City of Dunedin (Toronto Blue Jays)  
City of North Port (W. Villages Improvement Dist.) (Atlanta Braves)  
City of Orlando/Orange County (Orlando Magic)  
City of Sarasota (Baltimore Orioles)  
City of St. Petersburg (Tampa Bay Rays)  
Charlotte County (Tampa Bay Rays)  
Hillsborough County (Tampa Bay Buccaneers, Tampa Bay Lightning, and NY Yankees)  
Indian River County (Los Angeles Dodgers)  
Lee County (Boston Red Sox and Minnesota Twins)  
Miami-Dade County (Miami Dolphins)  
Osceola County (Houston Astros)  
St. Lucie County (NY Mets)

In addition to our experience on professional sports projects, BMO has represented higher education clients in developing stadiums and arenas. For example:

- BMO represented Florida Atlantic University on the Innovation Village Stadium project, which included construction of a 30,000 seat stadium.
- BMO represented the University of Central Florida in the construction of a football stadium and related retail facilities on its main campus.
- BMO represented Florida International University (FIU) in development of its football stadium and negotiated a Use and Capital Funding Agreement on behalf of FIU with a pro-soccer league.
- In Tallahassee, where Florida State University teams play in an arena shared with professional franchise teams, BMO represented a city/county public authority on a project to renovate the shared public arena.

While primarily serving government clients, BMO understands the private perspective. For example, BMO represented a private developer selected for a project to remediate “brown field” waterfront property in Escambia County. The project involved \$56 million of capital investment, including \$26 million attracted from out of state. The project was the first to use Florida’s New Markets Development Program. The city partnered with a CRA and a project-specific non-profit entity, which issued RFQs for design criteria and a master developer. The project included development of a minor league baseball stadium, a community park, other public features, and private buildings. When the master developer was selected, BMO represented it in negotiating four distinct project roles: project coordinator; design-build

contractor; management agent (for public improvements); and developer (for private improvements). Today, the completed project is viewed as a highly valued community asset.

BMO's experience with complex infrastructure projects goes beyond stadiums and arenas. A recent relevant example is the "One Daytona" project undertaken by both Volusia County and the City of Daytona Beach. Each governmental unit was negotiating economic incentive agreements with a community development district established by the International Speedway Corporation (ISC). Undertaking a major commercial redevelopment project on land adjacent to the speedway, ISC sought economic incentives from both the city and county. The negotiations were uniquely challenging because each governmental entity took different approaches to its respective contribution to the project's success. BMO found a way to accommodate both approaches, despite their substantially different obligations and remedies. It was essential to accommodate both, because each contribution was funding the cost of certain public infrastructure being constructed within the district, including roads, water and wastewater improvements, and parking improvements. The project could not succeed if either the city or the county was dissatisfied. By satisfying each governmental unit, BMO helped facilitate the ISC project, the success of which will benefit both the city and the county.

On another representative development project, BMO represented Broward State College on its Southwest Broward Campus project, undertaken jointly with FIU. The college owned nine acres of undeveloped land on the southwest side of the county. The college planned to construct an 80,000 square foot building on the property, and to share its use with FIU. The college wanted a hedge against the possibility that in the future it may not need a campus in that location, and it did not want to tie up its limited capital improvement fee in the project. The college ground leased the site to a private developer for a period of 45 years. The college and FIU subleased space in the completed building for only 20 years. BMO negotiated all necessary project documents, including the ground lease and the subleases, which were not only accepted by the developer but also approved by the Chancellor's office of the State College System and the Florida Division of Bond Finance. While we are not accountants, we are familiar with the applicable accounting rules and often work with client's in-house counsel, accountants, and auditors to confirm the treatment of project relationships.

BMO also represented Broward State College in redeveloping college-owned property in downtown Fort Lauderdale. Working with the college's infrastructure advisory group, BMO negotiated and documented agreements, including leases, pursuant to which the developer will develop, finance, construct, operate and maintain an office building on the property, with approximately 375,000 square feet and approximately 10,000 and 17,000 square feet for retail space, a parking garage, and covered outdoor plaza space having an area of approximately 5,400 square feet, together with other site improvements. The revenues generated from the ground rent will provide the college with operating capital for the 99 years of the ground lease.

Another major campus redevelopment project was for the University of South Florida (USF). The project goal was a complete design, build, finance, operate, maintain, and manage structure. USF sought to shift to the developer the construction risk of five student housing buildings, a wellness center and a dining facility. In addition, a key element of the project was also to shift to the developer the life cycle risk of each of the buildings. BMO represented USF in negotiating and documenting multiple agreements, including leases, with particular effort spent on shifting everything other than daily maintenance responsibilities to the private developer. This all private equity funded P3 project recently won the 2018 Best Education Project by P3 Bulletin Magazine.

One of BMO's more complex engagements was on behalf of the South Florida Water Management District (SFWMD). Along with the State of Florida, Department of Environmental Protection (DEP), SFWMD approved a plan to acquire from U.S. Sugar 73,000 acres of property within the Everglades ecosystem. SFWMD planned to lease property back to U.S. Sugar, which would manage it under heightened environmental standards and gradually take acres out of production over time. Working closely with SFWMD and DEP attorneys, BMO completed all of the necessary due diligence and negotiated all project leases and other documents. Over intense opposition from competitors of U.S. Sugar, the Supreme Court of Florida ultimately validated all material terms of this \$650 million project. *See Miccosukee Tribe v. S. Fla. Water Mgt. Dist.*, 48 So. 3d 811 (Fla. 2010).

As Florida's preeminent public finance firm, BMO naturally has extensive experience and credentials with regard to the tax and finance aspects of public infrastructure projects. Over our 50-year history, however, BMO has grown to meet clients' demands for other specialized project-related legal resources, including real estate services. Typically, our public clients are obtaining financing for a particular project. In addition to responsibility for bond documents, BMO often assists clients with other project documentation, which must be structured in a manner that preserves the tax-exempt treatment of the financing. For example, when Indian River County originally developed "Dodger Town," BMO acted as special County Attorney and handled all project-related transactions, including leasing.

BMO's real estate expertise is not limited to preserving tax-exempt status of project financing. Many projects involve taxable financing, and it is equally important to protect clients' interests in all related transactions. For example, on the Broward College Southwest Broward Campus project, BMO negotiated all documents, which included the ground lease agreement with the developer, the master operating lease with the developer, and a sublease with the developer. Because the developer financed the project with proceeds of a loan with an insurance company, BMO negotiated the terms of a leasehold mortgage and the required subordination agreements, standstill agreements, and other collateral and security agreements required by the lender.

We have highlighted above representative engagements that included services similar to those the County Attorney may need on the Project. Beyond those engagements, BMO has recently provided P3-related services to the following public entities:

- Bay County
- City of Cape Coral
- City of Dunedin
- City of Fort Myers
- City of Melbourne
- City of North Miami Beach
- City of Pensacola
- City of Riviera Beach
- City of Safety Harbor
- District of Columbia
- Florida Polytechnic University
- Hillsborough County
- Pinellas Suncoast Transit Authority
- Space Coast Infrastructure Agency
- State of Colorado
- State of North Carolina
- Village of Palmetto Bay
- United States Department of Transportation

**The Team.** A key advantage to working with BMO is our comprehensive, client-focused approach to every project. Too often, many attorneys or their clients minimize resources on a project, out of concern for cost. By contrast, BMO's philosophy, codified in our core values, is to assign a team of lawyers with complementary skills, expertise, and experience to a client in order to provide the highest quality and most responsive service. Unlike many of our competitors, BMO attorneys are not compensated based upon an "eat what you kill" approach, and it is not our custom to increase our transaction fees based upon the number of attorneys participating in a transaction. This approach ensures that an attorney familiar with the transaction or issue is always available to respond to the client's needs. Furthermore, this encourages our attorneys to continuously collaborate with the client and with each other throughout the representation. We take the same team approach when working with other outside advisers that a client often engages on a complex project (e.g., financial adviser, real estate consultants, design professionals, etc.).

The Office of the County Attorney can rely on every BMO lawyer to help protect the County's interests and to help the Project succeed. We invite you to review firm details and complete attorney biographies on our website ([www.bmolaw.com](http://www.bmolaw.com)). To lead the engagement, BMO will designate Ken Artin, who is based in Orlando and who will actively manage and

participate in the project. He will be assisted primarily by Fred Springer, Nailah Tatum, and Misty Taylor, each of whom is shareholder. Brief biographical sketches of the lawyers follow:

**Ken Artin.** Mr. Artin has been actively practicing law since 1986. He has represented federal and local government agencies, municipalities, counties, public and not-for-profit colleges and universities, and special taxing districts as bond counsel, disclosure counsel, and special counsel. He has extensive experience with infrastructure development projects, including stadiums and arenas. Mr. Artin is well-regarded by sponsors and lenders participating in public private partnerships, including lease-purchase financings. Mr. Artin was personally involved with every project described above, except the Escambia County project, which Mr. Springer handled.

**Fred Springer.** Mr. Springer created BMO's P3 practice group after joining the firm in 2007 and led it until 2011. His entire professional career since coming to Florida in 1993 has been dedicated to some form of public project delivery. For more than a decade, he has promoted and applied P3 models throughout the state and country. In 2004, as a member of the Board of Directors of the National Association of State Procurement Officials (NASPO), Mr. Springer met with staff of Virginia Governor Mark Warner, who were promoting the recently enacted Public-Private Educational Facilities and Infrastructure Act of 2002. With this legislation, Virginia was the first state to go beyond what others, including Florida, had done in the 1990's: authorize P3's for delivery of transportation projects. Virginia's innovation was to authorize the P3 method for a wide variety of public projects – an idea Florida finally adopted in 2013. That 2013 legislation created the *Partnership for Public Facilities and Infrastructure Act Guidelines Task Force*, which Mr. Springer and other BMO attorneys advised. After supporting the Task Force process, Mr. Springer drafted model P3 local legislation for use by members of the Florida Association of Counties. Mr. Springer regularly teaches continuing education classes on public procurement sponsored by the Florida Bar and the American Bar Association. He also teaches public employee ethics classes sponsored by the Florida League of Cities. Mr. Springer's recent complex procurement engagements include a \$180 million project to replace the State of Florida's accounting system, and a \$350 million project to replace the State of Florida's law enforcement radio network.

**Nailah Tatum.** With dual J.D. and M.B.A. degrees, Ms. Tatum focuses on real estate and business law and understands the complex connectivity among clients' business and legal needs. She has more than a decade of experience handling complex commercial real estate transactions, including assisting clients in the development, purchase and sale and leasing of significant commercial and industrial properties, assisting with land use and zoning issues, representing local governments in contracting and construction matters, and advising clients on policy and regulatory compliance. Ms. Tatum represented a national commercial real estate development company on a lease amendment between the City of Philadelphia and Comcast



Spectacor for the development of Xfinity Live!, the dining and entertainment component of the South Philadelphia Sports Complex.

**Misty Taylor.** A significant portion of Ms. Taylor's practice is focused on CDDs; in the last five years alone, she has participated in approximately 100 CDD financings totaling over \$712 million. Recently, Ms. Taylor represented a CDD on over \$40 million of financing for the Atlanta Braves spring training facility in Florida. She is frequently asked to serve as a panelist at conferences of the Government Finance Officers Association, the Florida Government Finance Officers Association and the Florida Association of Local Housing Finance Authorities. An active member of the Association of Florida Community Developers (AFCD), Ms. Taylor served on the AFCD task force that prepared and submitted comments to the recent IRS proposed regulations regarding political subdivisions.

**Insurance.** BMO satisfies the Type “B” insurance requirements for “Professional or Consulting Services.”

**References.** BMO encourages the County Attorney to speak with any of the jurisdictions identified above to confirm clients’ satisfaction with our services. Contact information for the required three references is:

- Daniel Eckert, (386) 736-5950, Volusia County Attorney
- Lacey Hofmeyer, (954) 201-7410, Broward College General Counsel
- John Long, (302) 831-2200, University of Delaware Executive Vice President & Chief Operating Officer (at University of South Florida until 2019)

**Rates.** As a government-focused law firm working closely with clients’ top finance officers and elected officials, BMO is fully cognizant of the need to deliver service cost-effectively. We often perform transactional work on a fixed fee basis, which is most appropriate where the scope of work is highly predictable and stable. For P3 work, which often is new to the many of the stakeholders, and which may draw on many different sources of legal expertise, we have found that local government entities typically prefer to pay hourly rates. This approach provides clients with the ability to control the level of legal services received, particularly when we are working as special counsel for clients with in-house counsel.

BMO proposes to serve the County Attorney at a blended hourly rate of \$400 for attorneys. The proposed key team members have decades of experience on highly complex matters. Law clerks and paralegals will be billed at \$100 per hour. To keep pace with inevitably increasing costs of doing business, each year after 2020 the rates will escalate at the rate of 5% per year.

BMO is always willing to work with clients that prefer alternative fee arrangements. While BMO cannot assume Project risk through a pure contingency fee arrangement, the engagement

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can be structured in alternative ways. For example, payment of fees could be 50% (\$200/hour) monthly during Project development, with the balance accruing and payable at financial close. In addition, based on the structure of the financing, if requested by those providing the financing for the Project to deliver customary market legal opinions on agreements to which the County is a party, we would be prepared to deliver such opinions and negotiate a separate legal fee payable only from financing proceeds.

**Conflicts.** We currently perform municipal finance legal services for the City of Gainesville. In the event the city is involved in the Project we would seek the appropriate business waivers. While we have assisted a number of governments collaborating on projects with mutual interests (such as the One Daytona project), we would need to avoid any situation that put the firm adverse to the city.

We appreciate the opportunity to express our interest in assisting the County Attorney with the Project. We would be glad to provide you with additional information on the firm and/or appear in person before the County Commission to further describe our interest in and qualifications for serving. In the meantime, if we can answer any questions regarding our qualifications or experience, please don't hesitate to call me at (407) 426-7001.

Sincerely,

BRYANT MILLER OLIVE P.A.

A handwritten signature in black ink, appearing to read "Kenneth R. Artin", with a stylized flourish at the end.

Kenneth R. Artin