



June 22, 2009

## **M E M O R A N D U M**

**TO:** District Board of Trustees

**FROM:** William D. Law, Jr., President

**SUBJECT:** Professional Services Contract - Andrews, Crabtree, Knox & Andrews

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### Item Description:

This item requests that the Board enters into a professional services contract with Andrews, Crabtree, Knox and Andrews.

### Overview:

The Board of Trustees maintains the decision to employ professional services of College attorneys. For the past eight years, the Board has employed the services of Johnson, Farrell and Mabile, LLC and William R. Mabile, III has been the partner assigned to the College. Mr. Mabile has provided a high level of professional service to the College in a wide variety of legal matters.

William R. Mabile, III has resigned his services at Johnson, Farrell & Mabile, LLC as of April 1, 2009 and is now an associate with Andrews, Crabtree, Knox and Andrews, a local Tallahassee firm. The College desires to continue the professional relationship with Mr. Mabile and his new firm effective April 1, 2009. Mr. Mabile's previous firm has no objection to his continuing the relationship with the College in association with Andrews, Crabtree, Knox and Andrews and the new firm welcomes the opportunity for this association. We feel that it will be mutually advantageous for the Board and Mr. Mabile to continue the association due to the successful partnership that has been established over the years.

### Salient Facts:

Section 1001.64(25), Florida Statutes, authorizes the Board of Trustees to serve as contracting agent of the College.

### Past Actions:

The Board has addressed this item previously by employing the services of Johnson, Farrell & Mabile, LLC.

**Future Actions:**

No further activity on the part of the Board is necessary.

**Funding/Financial Matters:**

The requested rate is \$150 per hour effective July 1, 2009. Funds for this personal contract are available from Fund 1 operating account.

**Staff Resource:**

Teresa Smith

**Recommended Action:**

That the Board enters into a professional services contract with Andrews, Crabtree, Knox and Andrews effective April 1, 2009 through June 30, 2010.

PROFESSIONAL SERVICES AGREEMENT  
FOR  
ATTORNEY SERVICES

THIS AGREEMENT for Professional Services entered this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the DISTRICT BOARD OF TRUSTEES OF TALLAHASSEE COMMUNITY COLLEGE, 444 Appleyard Drive, Tallahassee, Florida, 32304, hereinafter referred to as the "BOARD" and Andrews, Crabtree, Knox & Andrews, LLP, hereinafter referred to as the "FIRM." This Agreement shall bind the parties upon its execution by their representatives upon the date of the last signature.

WHEREAS the FIRM is needed to represent the BOARD, to render legal services for the BOARD and to serve as the legal advisor to the BOARD, the President and others in accordance with this Agreement.

WHEREAS, the FIRM has the expertise necessary to perform the duties and responsibilities outlined in the Agreement.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I - ENGAGEMENT OF THE FIRM**

The BOARD agrees to engage the FIRM and the FIRM agrees to perform the services set forth below. The FIRM understands and agrees that all services contracted for are to be performed solely by the FIRM and may not be subcontracted for or assigned without the prior written consent of the BOARD.

**ARTICLE II - SCOPE OF SERVICES**

The FIRM agrees under the supervision of the BOARD or its designees to perform certain professional services more particularly described as follows:

- A. Represent the BOARD in legal matters pertaining to the Tallahassee Community College, hereinafter called the COLLEGE, with respect to preparation and execution of contracts, purchase orders, administrative and personnel matters, real estate transactions, litigation and other legal matters of COLLEGE employees relating to their employment by the COLLEGE. The FIRM shall attend and provide counsel to the BOARD at Board meetings and other conferences called by the BOARD. The FIRM shall be available at all times for consultation with the BOARD, its Chairman and the President and delegated members of the Administrative Staff authorized by the BOARD to confer with the FIRM concerning legal affairs of the COLLEGE. The scope of this agreement excludes legal services provided through assignment by the Florida Risk Management Insurance Consortium or matters related to governmental relations external to the COLLEGE.
- B. Review and analyze BOARD legal files, data, documents, and other materials concerning the above matters and advise on recommended legal course.
- C. Prepare and file pleadings, or motions, or briefs which may be required and represent the BOARD in any related litigation.
- D. Initiate and conduct discovery, including depositions, on behalf of the BOARD and represent the BOARD in discovery initiated by opposing parties.
- E. Represent the BOARD at trial or on appeal.
- F. Attend and participate in meetings, conference calls, field trips, or the like and report on the status of legal matters.

- G. Acquire speciality legal services when necessary with concurrence of College president. Review specialty attorney service contracts, engagement letters, or retainer agreements. Review specialty attorney service invoices and advise College president as to reasonableness and necessity for specialized legal services.

**ARTICLE III - COMPENSATION FEES**

- A. The BOARD shall be billed in accordance with Exhibit A, the agreed-upon billing rates for partners, of counsel, associates, and paralegals of the FIRM.
- B. Routine expenses such as local phone calls, local facsimile transmissions, routine postage, copy work, local travel expenses, printed library materials, and local courier, word processing, clerical or secretarial services are overhead and will not be separately compensated.
- C. Billable hours shall be measured in six (6) minute increments. Compensation of attorney hours will be for actual time spent providing attorney services to the BOARD.
- D. Premium rates will not be paid for overtime work.

**ARTICLE IV - COMPENSATION COSTS**

- A. Reimbursement of costs for such items as exhibits, transcripts and witness fees requires prior written authorization by the COLLEGE Contract Administrator and shall be reimbursed based upon documented charges. The BOARD shall not pay for firm surcharges added to third party vendor charges.
- B. Non-routine office overhead expenses such as long-distance telephone calls, long distance facsimile transmissions, long distance courier services, bulk mailing, bulk

third-party copying, blueprints, x-rays, photographs, and computer-assisted legal resource services must be justified to the BOARD and shall be reimbursed based on documented third party vendor charges. If these charges exceed \$1,000 per month, written approval from the BOARD's Contract Administrator must be obtained by the FIRM, prior to the expenditure of funds. In-house bulk mailings and bulk copying expenses must be supported by usage logs or similar documentation. Firm surcharges are not reimbursable.

- C. The FIRM shall only bill the BOARD for the proportionate share of the cost of legal research, attending hearings or engaging in client representation of any type, which is also applicable to other clients.
- D. Exceptional non-routine office overhead expenses must be expressly defined in the contract Agreement or in an Amended Agreement and approved by the Board before being incurred.
- E. The FIRM shall notify the BOARD contract administrator when costs reach \$5,000.00 per month. Said notification shall be made as soon as is practicable and prior to the next monthly invoice.

#### **ARTICLE V - FORMAT FOR INVOICES**

Each statement for fees and costs shall be submitted after the services have been rendered, in a format that includes, at a minimum, the following information:

- A. Case name and number, if applicable, or other legal matter reference.
- B. Invoice number for the particular bill.
- C. FIRM taxpayer identification number.

- D. Inclusive dates of the month covered by the invoice.
- E. Itemization of the date; hours billed (if hourly); a concise, meaningful description of the services rendered, with sufficient detail to enable the BOARD to evaluate the services rendered and costs; the person(s) who performed the services for each day during which the FIRM performed work; their hourly rate (if hourly) as specified in Exhibit A, and any billing rate that is for some reason different from the one furnished in Exhibit A. If billing is based on other than an hourly rate, the basis for the billing must be explained in this section.
- F. A listing of all invoiced costs to be reimbursed pursuant to Article IV - COMPENSATION COSTS section. Invoiced costs must be accompanied by copies of actual receipts.
- G. The total of only the current bill. Prior balances or payment history should be shown separately, if at all.
- H. A certification statement, signed by the FIRM's contract administrator, that reads, "I certify that all costs and fees claimed for payment are accurate and were performed in furtherance of the Agreement between Andrews, Crabtree, Knox & Andrews, LLP and the BOARD."
- I. Any other information as may be requested by the BOARD's Contract Administrator.

**ARTICLE VI - ADMINISTRATION OF AGREEMENT**

- A. The COLLEGE Contract Administrator is the College Vice President for Administrative Services / Chief Financial Officer.
- B. The FIRM Contract Administrator is Bill Mabile.

- C. All written approvals referenced in this Agreement must be obtained from the parties' Contract Administrators or their designees.
- D. This contract shall be governed by and construed under the laws of the State of Florida and, where applicable, the provisions of Chapter 2-37, Florida Administrative Code.
- E. All notices must be given to the parties' Contract Administrator.

#### **ARTICLE VII - STATUS REPORTING**

- A. The FIRM shall provide the BOARD with monthly reports regarding the issues involving staff; the judiciary and local officials; statutory interpretation, case law interpretation; unique cases and legal arguments; accomplishments for reporting period, and suggestions. The status report shall be no longer than one to two pages and shall only describe significant events or the absence of significant events. Pleading or case history shall not be recited.
- B. The FIRM will provide immediate notice by e-mail or facsimile transmission and telephone regarding significant case developments that will likely result in media inquiries.

#### **ARTICLE VIII - OTHER AVAILABLE SERVICES**

Upon receiving approval from the BOARD, the FIRM shall use existing College Agreements, when available and cost effective, the acquire services (e.g., computer assisted legal research) and the assistance of professionals (e.g., court reporters, expert witnesses) at reduced rates.

#### **ARTICLE IX - PUBLIC RECORDS**

All documents prepare pursuant to the Agreement that constitute attorney work product, as



defined in Section 119.07(1)(1), Fla. Stat., shall be marked with a notice stating that the information contained in that document is exempt from disclosure for a period of time in accordance with the Public Records Law.

**ARTICLE X - SPECIAL CONDITIONS**

- A. The FIRM will make affirmative efforts to achieve cost effectiveness by consolidating court hearing, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.
- B. Multiple staffing at meetings, hearings, depositions, trials, etc., by the FIRM will not be compensated unless prior written approval from the College Contract Administrator has been obtained.
- C. FIRM agrees that all documents shall be promptly returned at the termination of the FIRM's involvement in the case or matter at hand.
- D. All documents intended to be provided to third parties or college employees filed with a court or agency must be sent to the College Contract Administrator with enough lead time to allow for meaningful review, unless waived by the College Contract Administrator. Copies of final or as-filed documents should also be sent to the College Contract Administrator.
- E. All discovery, including depositions, document production, etc., shall be coordinated by the BOARD's contract administrator and the FIRM's contract administrator to avoid needless duplication of efforts.
- F. All documents prepared pursuant to this Agreement are subject to Florida's Public

Records Law. Refusal of the FIRM to allow public access to such records as required by such law shall constitute grounds for unilateral cancellation of this Agreement. Documents prepared for litigation or in anticipation of litigation, including administrative actions, shall not be subject to public access until the action is concluded.

#### **ARTICLE XI - TERM OF CONTRACT**

- A. The initial contract shall begin upon execution and shall be effective through \_\_\_\_\_, 2010. The contract may be renewed on an annual basis until terminated by either party with thirty (30) days prior written notice.
- B. If this Agreement is terminated, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the FIRM under this Agreement shall be made available to and for the exclusive use of the BOARD.

#### **ARTICLE XII - AMENDMENTS**

Either party may, from time to time, request changes under this Agreement. Such changes which are mutually agreed upon shall be incorporated in written amendments to this Agreement.

#### **ARTICLE XIII - ENTIRE AGREEMENT**

This instrument, including any attachments, embodies the entire Agreement of the parties and is not intended to create any third party beneficiaries. There are no other provisions, terms, conditions, or obligations. This Agreement supersedes all previous oral or written communications, representations or Agreements on this subject.

#### **ARTICLE XIV - INDEPENDENT FIRM**

The FIRM is an independent contractor consistent with the Rules of Professional Conduct,

and is not an employee or agent of the BOARD. Nothing in this agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the BOARD and the FIRM, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.

**ARTICLE XV - LIABILITY**

The BOARD shall not assume any liability for the acts, omissions to act or negligence of the FIRM, its agents, servants, and employees, nor shall the FIRM disclaim its own negligence to the AGENCY or any third party.

The firm shall maintain, during the period of this Agreement, a professional liability insurance policy for the professional services to be rendered.

**ARTICLE XVI - NON-DISCRIMINATION**

The FIRM shall comply with all federal, state, and local laws and ordinances applicable to the work and shall not discriminate on the grounds of race, color, religion, sex, disability, or national origin in the performance of work.

In witness whereof the parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**DISTRICT BOARD OF TRUSTEES  
TALLAHASSEE COMMUNITY COLLEGE**

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. William D. Law, Jr.  
President

ATTEST:

**FIRM**

By: William R. Mabile, III  
William R. Mabile, III, Esq.

ATTEST:

Wynne B. Twilley  
Date: 5-21-09

**EXHIBIT A - FEE SCHEDULE**

Hourly Billing Schedule:

FIRM's attorney and paralegal staff to be used under this contract include the following individuals at the hourly rates indicated:

<b><u>Name</u></b>	<b><u>Hourly Rate</u></b>
Attorneys	\$150.00
Paralegals	\$50.00

The above listed schedule of rates is guaranteed through the duration of this Agreement. Adjustment by the parties shall be documented in writing by amendment to the Agreement.