




October 21, 2013

MEMORANDUM

TO: District Board of Trustees
FROM: Jim Murdaugh, President 
SUBJECT: Proposed fee increase in Professional Services Contract for Legal Services for Andrews, Crabtree, Knox and Andrews, LLP

Item Description

Proposed fee increase for Professional Legal Services for Andrews, Crabtree, Knox and Andrews, LLP effective November 1, 2013 through October 31, 2014. The proposed increase amount requested in yearly fees would be from \$160,000 to \$175,000. The increase is requested due to the fact that the firm's expenses have increased over time and that the firm is being required to provide services outside of the scope of the initial contract.

Overview and Background

The Board of Trustees maintains the decision to employ professional services of College attorneys. The current contract with Andrews, Crabtree, Knox and Andrews, LLP provides for amendment changes under Article XII.

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.

Past Actions by the Board

At the September 16, 2013 District Board of Trustees meeting approval was granted for a 1 year extension of the contract for Andrews, Crabtree, Knox & Andrews LLP beginning November 1, 2013 through October 31, 2014.

Funding/Financial Implications

Funds for this professional contract are available from the Fund 1 operating account.

Staff Resource

Teresa Smith

Recommended Action

Approve fee increase from \$160,000 to \$175,000 per year.

PROFESSIONAL SERVICES AGREEMENT
FOR
ATTORNEY SERVICES

THIS AGREEMENT for Professional Services entered this 1st day of November, 2010, 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 specialty 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 annual flat fee of \$160,000 for services 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.

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. 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.

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; a concise, meaningful description of the services rendered, with sufficient detail to enable the BOARD to evaluate the services rendered and costs; and the person(s) who performed the services for each day during which the FIRM performed work.
- 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 prepared 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 October 31, 2011. The contract may be renewed on an annual basis with four (4) consecutive one (1) year renewals for a total contract period of five (5) years.
- 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 1st day of November, 2010.

**DISTRICT BOARD OF TRUSTEES
TALLAHASSEE COMMUNITY COLLEGE**

By:

Eugene Lamb, Jr.
Eugene Lamb
Board Chair

ATTEST:

[Signature]

Date: 10/26/10

FIRM

By: William R. Mabile, III

William R. Mabile, III, Esq.

ATTEST:

Gloria Wells

Date: Oct. 19, 2010

EXHIBIT A - FEE SCHEDULE

Billing Schedule:

An annual flat fee is to be paid in equal monthly installments. The firm proposes to do the College community's legal work for the fee of \$160,000 per year, plus reasonable expenses. The above listed flat fee is guaranteed through the duration of this Agreement. Adjustment by the parties shall be documented in writing by amendment to the Agreement.

ANDREWS, CRABTREE, KNOX & ANDREWS

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

JEANNETTE M. ANDREWS
ROBERT C. CRABTREE
J. CRAIG KNOX
BEN A. ANDREWS*
JOE LONGFELLOW, III

OF COUNSEL
WILLIAM R. MABILE, III

*ALSO ADMITTED IN GEORGIA

1558 VILLAGE SQUARE BLVD.
SUITE 1
TALLAHASSEE, FL 32309

TELEPHONE:
850-297-0090
FACSIMILE:
850-297-0219

MEMBER OF CLM
(CLAIMS & LITIGATION MANAGEMENT ALLIANCE)

September 19, 2013

Via E-mail

Dr. Teresa Smith
Vice President for Administrative Services
and Chief Financial Officer
Tallahassee Community College
444 Appleyard Drive
Tallahassee, FL 32304

Re: Professional Services Agreement for Attorney Services

Dear Dr. Smith:

On behalf of Andrews, Crabtree, Knox & Andrews, LLP, I am expressing the firm's appreciation for the District Board of Trustees' approval of a one-year extension of the firm's contract to provide legal services for the College.

The new term shall begin on November 1, 2013 and continue through October 31, 2014.

Pursuant to Article XII, this firm respectfully requests an amendment to the agreement. As agreed by the parties and as memorialized in Article III of the agreement, this firm has billed the College a flat fee of \$160,000.00 per year for legal services. The firm is requesting an increase in the flat fee amount to \$175,000.00 per year.

This request is justified by increasing costs to the firm and the reality that quality legal services in this community normally are much more expensive. For example, when the legal services agreement was opened to other firms, Firm A offered to perform legal services for \$190.00 per hour, which last year would have cost the college a minimum of \$190,000.00. Firm B, a statewide firm, offered to perform legal services for \$290.00 per hour. This would have resulted in a minimum expense to the college of \$290,000.00 per year and would likely be much higher due to the potential for multiple staffing and travel for firm attorneys located in other cities. In short, \$175,000.00 per year for legal services is a more than reasonable amount and the College's acceptance will demonstrate continuing fiscal prudence.

Dr. Teresa Smith
September 19, 2013
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One other change to the agreement is requested. Article IV outlines compensation for costs. There is no mention in Article IV of non-routine travel on College business. During the course of this firm's representation of the College, non-routine travel has occurred one or two times per fiscal year. For example, attendance at Valencia College's workshop on college legal matters is tentatively scheduled for January, 2014. Past workshops have been valuable and information obtained has assisted this firm with its advice to TCC administration and the District Board of Trustees. A new subparagraph D could be added to Article IV to authorize non-routine travel and reimbursement at the current state-authorized rate.

Therefore, Andrews, Crabtree, Knox & Andrews, LLP respectfully requests that the professional services agreement for attorney services be amended as outlined above.

Please let me know if you have any questions. Thank you for your attention to this matter.

Very truly yours,
ANDREWS, CRABTREE, KNOX & ANDREWS, LLP



William R. Mabile, III
For the firm