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[www.broward.edu](http://www.broward.edu)

**BROWARD  
COLLEGE**

Define yourself.

To: Members of the Board of Trustees

From: J. David Armstrong Jr., President

Date: June 23, 2009

Place: Regular Meeting of the Board of Trustees  
Broward College  
Boardroom 1208, Building 33, Willis Holcombe Center  
111 East Las Olas Boulevard  
Fort Lauderdale, Fl

Subject: Agenda Item VII-L - Attorney Contract

**Brief Description:**

The Board has selected Tripp Scott, P.A. to provide legal services and to serve as general counsel for the College. Attached is proposed agreement for legal services.

**Benefit To BC:**

Provide legal guidance on contracts and other legal matters.

**Relationship to College Master Plan:**

Communicate the role of the College in the community by coordinating consistent messages that reflect the values and goals of the Education Master Plan.

**RECOMMEND APPROVAL**

**AGREEMENT BETWEEN**  
**BROWARD COLLEGE**  
**AND**  
**TRIPP SCOTT P.A.**

This Agreement is entered in the City of Fort Lauderdale, Broward County, Florida, by and between **Broward College** (hereinafter referred to as "the College") with offices located at 111 East Las Olas Boulevard, Fort Lauderdale, Florida, 33301 and **Tripp Scott, P.A.**, (hereinafter referred to as "Counsel"), with offices located at 110 Southeast 6<sup>th</sup> Street, Fifteenth Floor, Fort Lauderdale, Florida, 33301. This Agreement shall bind the parties upon its execution by their representatives.

WHEREAS, College issued a Request for Qualifications (RFQ), identified as RFQ 409-003, General Counsel/Legal Services, which is incorporated by reference herein, for the purpose of receiving proposals from firms interested in providing general counsel/legal services to the Broward College District Board of Trustees (hereinafter referred to as the "Board") and the College; and

WHEREAS, COUNSEL has submitted a proposal in response to RFQ (hereinafter referred to as "Proposal"), incorporated herein by reference, and has been selected by the Board, at the May 26, 2009 Board Meeting, to provide general counsel/legal services to the Board and the College as detailed herein; and

WHEREAS, the Board has engaged the services of Counsel, and the Agreement between the Board and Counsel is up for review and renewal;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**Article 1 – Engagement of Tripp Scott**

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

**Article 2 – Scope of Services**

Tripp Scott agrees to:

- (1) Act in the capacity of Board attorney, including, attending all monthly Board meetings, and advising the Board on all legal matters and matters relating to parliamentary procedure; and

VHL  
JUN 23 2009  
**ENCLOSURE**

- (2) Establish during regular College business days a scheduled presence of at least a half day three times per week at the District Administrative center, wherein the College will provide an office, telephone and the necessary support services, including but not limited to secretarial services, which Counsel may use as customary; and
- (3) Provide day-to-day legal advice on all routine matters arising from normal operations, reviewing, examining or preparing legal documents, interpreting and rendering opinions on pertinent laws and court decisions, and administrative hearings, requests Attorney General Opinions when appropriate, researching Statutes, Rules, case law and related issues in the course of dealing with current operations; and
- (4) Work in cooperation with the Department of Education General Counsel on matters affecting the College, coordinate, monitor and advise the Board on the status of all legal matters where the College may be represented, from time to time, by attorneys other than Counsel; and
- (5) Act in the capacity of College ambassador, as appropriate, at College extra-curricular events and functions as requested by the Board or College President.

### **Article 3 – Time of Performance**

This Agreement shall begin on July 1, 2009 and end on June 30, 2013.

### **Article 4 – Consideration**

- (1) Fees and costs shall be paid in accordance with the provisions of ATTACHMENT "A" FOR PRIVATE ATTORNEY SERVICES, including Exhibit 1.
- (2) Justified and reasonable travel expenses which are directly and exclusively related to the professional services rendered under this contract will be reimbursed in accordance with Sec. 112.061, Florida Statutes. For the purpose of computing travel expenses, Tripp Scott's place of business shall be listed in the Preamble to this Agreement and all travel expenses shall be computed on that basis.
- (3) College is exempted from payment of Florida state sales and use taxes and Federal Excise tax. Tripp Scott, however, shall not use the College's tax exemption number to secure any materials or services. Tripp Scott shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- (4) Tripp Scott shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligations, judgment, lien or any form of indebtedness.

VII-L  
JUN 23 2009

ENCLOSURE

- (5) Payment for services shall be issued in accordance with provisions of Sec. 215.422, Florida Statutes.
- (6) Pursuant to Sec. 215.422(5), Florida Statutes, the Department of Financial Services has established a Vendor Ombudsman to act as an advocate for vendors. The Vendor Ombudsman may be reached at (850) 413-7269 or 410-9724.
- (7) In accordance with the provision of Sec. 287.0582, Florida Statutes, the College's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature, if the terms of this Agreement extend beyond the current fiscal year.
- (8) A contingency fee contract must be commercially reasonable. "Commercially reasonable" means the fees shall be no more than the amount permissible pursuant to Rule 4-1.5 of the rules regulating the Florida Bar and case law interpreting that rule. If the amount of the fee is in dispute, the counsel retained by the state shall participate in mandatory binding arbitration. Payment of all attorney's fees is subject to appropriation. Attorney's fee shall be forfeited if, during the pendency of the case, the counsel retained by the state takes a public position that is adverse to the State's litigation or settlement posture.
- (9) If multiple law firms are parties to the contract, then the contract must address the internal system of governance amongst the firms and each law firm must identify one member of its who is authorized to legally bind the firm.

#### **Article 5 – Documentation**

- (1) Tripp Scott shall submit monthly written invoices, in accordance with the requirements of ATTACHMENT 'A' FOR PRIVATE ATTORNEY SERVICES, paragraph D, Format for Invoices, for all fees or other compensation for services or expenses in detail sufficient for a proper pre-audit and post-audit. All invoices shall be submitted to **J. David Armstrong, Jr., President of Broward College, 111 East Las Olas Boulevard, Fort Lauderdale, Florida, 33301.**
- (2) Each private attorney who is under contract to provide attorney services for the state or a state agency, shall, from the inception of the contractual relationship until at least four (4) years after the contract expires or terminates, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney's services. The private attorney shall make all such records available for inspection and copying upon request in accordance with Chapter 119, Florida Statutes.

Vll-L  
JUN 23 2009

**ENCLOSURE**

## **Article 6 – Public Records**

All documents prepared pursuant to this Agreement are subject to Florida's Public Records Law. Refusal of Tripp Scott, P. A. to allow public access to such records as required by such law shall constitute grounds for unilateral cancellation of this Agreement.

## **Article 7 – Termination of Agreement**

- (1) College may terminate the Agreement for its convenience or cause by giving give (5) days written notice by registered mail to Tripp Scott P. A., specifying the effective date of termination. If this Agreement is terminated, Tripp Scott P. A. shall be reimbursed for services satisfactorily performed subject to any damages sustained by the College.
- (2) If this Agreement is terminated, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for Tripp Scott P. A. under this Agreement shall be made available to and for the exclusive us of the College.
- (3) Notwithstanding the above, Tripp Scott, P.A. shall not be relieved of liability to the College for damages sustained by the College by virtue of any termination or breach of this Agreement by Tripp Scott P.A.

## **Article 8 – Amendments**

Any changes must be mutually agreed upon and incorporated in written amendments to this Agreement.

## **Article 9 – Independent Contractor**

Tripp Scott P.A. and any of its employees, agents or assigns are independent contractors and not employees or agents of the College.

## **Article 10 – Liability**

The College shall not assume any liability for the acts, omissions to act or negligence of Tripp Scott P.A., its agents, servants and employees, nor shall Tripp Scott P.A. disclaim its own negligence to the College or any third party.

Tripp Scott P.A. shall maintain, during the period of this Agreement, a professional liability insurance policy for the professional services to be rendered.

## **Article 11 – Nondiscrimination and Compliance**

V 11-L

JUN 23 2009

Tripp Scott P.A. 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 or national origin in the performance of work.

**Article 12 – Administration of Agreement**

- (1) The college contract administrator is J. David Armstrong, Jr.
- (2) Tripp Scott P.A. contract administrator is Kevin A. Fernander.
- (3) All written and verbal approvals referenced in the Agreement must be obtained from the parties' contract administrators or their designees.
- (4) All notices must be given to the parties' contract administrator.
- (5) This contract shall be governed by and construed under the laws of the State of Florida.

**Article 13 – Public Entity Crime**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287,017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Any contract in violation of this provision is null and void.

**Article 14 – Agreement as Including Entire Agreement**

This instrument, including any attachments, embodies the entire Agreement of the parties. 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 15 – Special Conditions**

- (1) Tripp Scott P.A. agrees to permanently refrain from using or mentioning its association with the College in advertisements, letterhead, business cards, etc. Tripp Scott P.A.'s services to the College may be generally described in Tripp Scott P.A.'s professional resume. Tripp Scott P.A. may not give the impression in any manner that the College recommends or endorses Tripp Scott P.A.

V 11 - L  
JUN 23 2009

(2) All contacts with the news media pertaining to the subject of this Agreement shall be referred to the College contract administrator.

(3) Anything that is produced by or developed in connection with this contract shall remain the exclusive property of the College and may not be copyrighted, patented or otherwise restricted as provided by law. Neither Tripp Scott, P.A. nor any other individual employed under this Agreement shall have any proprietary interest in any product(s) developed or produced under this Agreement

IN WITNESS WHEREOF, Broward College and Tripp Scott, P.A. have executed this Agreement.

**Tripp Scott, P.A.**

**Broward College**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

J. David Armstrong, Jr., President

\_\_\_\_\_  
FID Number

VII-L  
JUN 23 2009

ENCLOSURE \_\_\_\_\_

## ATTACHMENT "A" FOR PRIVATE ATTORNEY SERVICES

### A. Scope of Services

- (1) Tripp Scott P.A. shall: Act in the capacity of Board attorney, including, attending all monthly Board meetings, and advising the Board on all legal matters and matters relating to parliamentary procedure; and
- (2) Establish during regular College business days a scheduled presence of at least a half day three times per week at the District Administrative center, wherein the College will provide an office, telephone and the necessary support services, including but not limited to secretarial services, which Counsel may use as customary; and
- (3) Provide day-to-day legal advice on all routine matters arising from normal operations, reviewing, examining or preparing legal documents, interpreting and rendering opinions on pertinent laws and court decisions, and administrative hearings, requests Attorney General Opinions when appropriate, researching Statutes, Rules, case law and related issues in the course of dealing with current operations; and
- (4) Work in cooperation with the Department of Education General Counsel on matters affecting the College, coordinate, monitor and advise the Board on the status of all legal matters where the College may be represented, from time to time, by attorneys other than Counsel; and
- (5) Act in the capacity of College ambassador, as appropriate, at College extra-curricular events and functions as requested by the Board or College President.
- (6) Review and analyze College legal files, data, documents and other materials concerning the College and advise an appropriate legal course of action. Attend and participate in meetings, conference calls, inspections or the like and report on the status of the legal matters.

### B. Compensation – Fees

- (1) For said routine scope of services, the College will compensate Counsel at an annual retainer rate of \$185,000.00, payable in twelve (12) monthly increments.
- (2) As mutually agreeable, College may engage Counsel to perform non-routine services other than those outlined above. For non-routine services, including but not limited to, matters involving intensive review, research or negotiation, court appearances, or services other than those of a routine nature as outlined above, Counsel shall be compensated at the rate of \$165.00 per hour. Such special services shall be on a specific written authorization of the contract administrator

VII-L  
JUN 23 2009

**ENCLOSURE** \_\_\_\_\_

and shall be confirmed in writing, and billing for said services shall be identified by Counsel and verified by College personnel.

**C. Compensation – Costs**

- (1) Routine expenses such as local phone calls, local facsimile transmissions, routine postage, copy work, printed library materials and local courier, word processing, clerical or secretarial services are overhead and will not be separately compensated.
- (2) Non-routine office overhead expenses such as long distance phone calls, long distance facsimile transmission, long distance courier services, bulk mailings, bulk third-party copying, blueprints, x-rays, photographs and computer-assisted legal research services must be justified to the College and shall be reimbursed based on documented third-party vendor charges. If these charges exceed \$500.00 per month, prior written approval from the President must be obtained by Counsel. In-house bulk mailings and bulk copying expenses must be supported by usage logs or similar documents. Firm surcharges are not reimbursable.
- (3) Tripp Scott P.A. shall only bill the College for a proportionate share of the cost of legal research, attending hearings or engaging in client representation of any type, which is applicable to other clients.

**D. Format for Invoices**

- (1) Within 30 days of service provision, each statement for fees and costs shall be submitted 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) Tripp Scott P.A. taxpayer identification number;
  - (d) Tripp Scott P.A. and Broward College contract administrators' names;
  - (e) Inclusive dates of the month covered by the invoice;
  - (f) Itemization of the date, hours billed (if hourly), a concise, meaningful description of the services rendered, with sufficient detail to enable the College to evaluate the services rendered and costs, the person(s) who performed the services for each day during which Tripp Scott P.A. performed work, their hourly rate (if hourly) as specified in Exhibit 1 and any billing rate that is for some reason different from the one furnished in Exhibit 1, e.g. travel at a reduced hourly rate. **(NOTE: If billing is based on other than an hourly rate, the basis for the billing must be explained in this section.)**
  - (g) A listing of all invoiced costs to be accompanied by copies of actual receipts;
  - (h) The total of only the current bill. Prior balance or payment history should be shown separately, if at all.

VII-L  
JUN 23 2009

ENCLOSURE

- (i) A certification statement, signed by Tripp Scott P.A. 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 Broward College and Tripp Scott P.A.
- (j) Any other information as may be requested by the College contract administrator.

**E. Administration of Agreement**

- (1) The College contract administrator is J. David Armstrong, Jr.
- (2) Tripp Scott P.A. contract administrator is Kevin A. Fernander.
- (3) All written/oral approvals must be obtained from the parties' contract administrators or their designees. All notices must be given to the parties' contract administrator.
- (4) This contract shall be governed by and construed under the laws of Florida.

**F. Other Available Services**

- (1) Upon received approval from the College, Tripp Scott P.A. shall use existing College agreements, when available and cost effective, to acquire services, (e.g. computer-assisted legal research) and the assistance of professionals (e.g. court reporters, expert witnesses) at reduced rates.

**G. Special Conditions**

- (1) Tripp Scott P.A. will make affirmative efforts to achieve cost effectiveness by consolidating court hearings, limited travel, streamlining case processing, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.
- (2) Multiple staffing at meetings, hearings, depositions, trials, etc. by Tripp Scott P.A. will not be compensated without prior written approval from the College.
- (3) Tripp Scott P.A. agrees that all documents shall be promptly returned at the termination of Tripp Scott. P.A.'s involvement in the case or matter at hand.
- (4) The College in-house staff shall be used in the legal matter to the maximum extent possible.
- (5) Tripp Scott, P.A. will provide immediate notice by facsimile transmission or telephone regarding significant case developments which will likely result in media inquiries.
- (6) Tripp Scott P.A. shall provide the College immediate notice of any representation undertaken by Tripp Scott P.A. in matters where the client is suing or being sued by the state or state entities in any civil or adversarial administrative action.

- (7) The College's general counsel must approve and sign all contract as to form and legality. The contract must be signed by the College head, who shall also maintain custody of the contract.

V/1-2

JUN 23 2009

**EXHIBIT 1 – FEE SCHEDULE**

1. Hourly Billing Schedule:

(A) Tripp Scott P.A. attorney and paralegal staff to be used under this contract include the following individuals at the hourly rates indicated:

Name:	Hourly Rate:
1. Edward J. Pozzuoli	\$165.00
2. Kevin A. Fernander	\$165.00
3. Scott J. Jordan	\$165.00
4. Tanya L. Bower	\$165.00

The above rates may be adjusted if both parties agree and shall documented in writing by amendment to this Agreement.

VII-L

JUN 23 2009

ENCLOSURE \_\_\_\_\_