

Board of Trustees Agenda Item

Board Meeting Date: August 6, 2012

Title of Item: Approval of Retainer Agreement for Legal Services with Jaret & Jaret, Attorneys at Law

Background and Analysis:

This Retainer Agreement will provide legal services required for advice and litigation as construction counsel in matters involving Measure E and C construction and other construction-related issues. Funding is provided by measures E and C.

Recommendation: Executive Director of Facilities, Operations and Construction Management Charles Allen recommends approval of the Retainer Agreement for legal services with Jaret & Jaret, Attorneys at Law

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|---------------------------|---------------------|
| Submitted by: | Charles Allen x6150 |
| Additional contact names: | Kevin McElroy x6201 |
| Is backup provided? | Yes |

RETAINER AGREEMENT

This Agreement is made between JARET & JARET, Attorneys at Law, hereinafter "Attorneys" and FOOTHILL DE ANZA COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "Client." It is required by, and intended to fulfill, the requirements of Business and Professions Code §6148.

1. RETENTION. Client retains the law firm, not any particular attorney. Client understands that while one attorney will be primarily responsible for the conduct of Client's case, the firm uses a team approach. Attorneys, other than the primary attorney, and assistants will be given assignments relating to Client's case when appropriate.

2. SCOPE OF SERVICES PROVIDED. Legal services to be provided are: To advise Client concerning all aspects of construction and respond to claims and lawsuits concerning Measure C campus construction and litigation associated with Measure E construction.

3. DUTIES. Attorneys will perform the legal services called for under this Agreement. Client will be truthful and cooperative with Attorneys, keep Attorneys reasonably informed of developments, be available for reasonable consultation, and make timely payments as required by this Agreement.

4. SETTLEMENT. Attorneys will not enter into a settlement without Client's consent.

5. DISCLOSURE OF INFORMATION. Attorneys may disclose to third persons any information acquired by Attorneys, whether from Client or any other source, which is otherwise privileged under the laws of the State of California, when Attorneys deem such disclosure in Client's interest in connection with the matter in which Attorneys represent Client.

6. CHECK FOR CONFLICTS OF INTEREST. Attorneys have made a check for conflicts of interest, based on the information Client has provided. Should any facts or circumstances change at a later date, or should Client be concerned that a conflict of interest has arisen, Client should notify Attorneys immediately. While there appears to be no conflict of interest at this time, because circumstances can change, both Attorneys and Client must be continually alert to the development of any conflicts. Client should contact Attorneys immediately if a conflict or potential conflict becomes apparent.

7. PRIVACY RIGHT. Attorneys will not disclose non-public personal information about Client to any third-party, except as permitted by law and State ethics rules governing client confidences. Attorneys will comply with the Rules of Professional Conduct, specifically those which define confidentiality standards.

8. FEES & COSTS. Client will pay to Attorneys fees for legal services provided under this Agreement at Attorneys' prevailing rates for time spent. Current hourly rates for legal personnel, and other billing rates, are set forth in the attached Rate Schedule. Periodic increases may occur at Attorneys' election. Client will be billed monthly. Payment is due upon receipt.

Client will pay all costs and expenses of representation including but not limited to court filing fees, deposition fees, expert witness costs and fees, long distance telephone calls, fax transmissions, mileage, private investigator fees, legal research and data base services,

accounting fees, outside word processing, costs of process service, photocopying and any and all other costs or expenses whether or not recoverable from any person. Specific rates for some of these categories are set forth on the Rate Schedule attached hereto. Where an item is not included on the Rate Schedule, Client will be billed for the actual cost to Attorneys for that item.

Attorneys may advance costs and expenses and bill Client for reimbursement of costs and expenses, or Attorneys may request the advance of reasonable and foreseeable fees, costs and expenses prior to incurring them, at Attorneys' option. Attorneys reserve the right to request the advance of reasonable and foreseeable Attorneys' fees prior to trial, arbitration, summary judgment motions or any other anticipated activities that are significantly time consuming.

If, while this Agreement is in effect, Attorneys increase the hourly rates or costs charged to Client, that increase may be applied to fees and costs incurred under this Agreement, but only with respect to services provided 30 days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rates, Client may terminate Attorneys' services under this Agreement pursuant to paragraph 11 below.

9. TOTAL FEES AND COSTS. Total fees and costs cannot be estimated. Litigation costs vary widely and are dependent upon the action taken by the other party as well as the nature and complexity of the issues. Client acknowledges that Attorneys have made no promises about the total attorney's fees to be incurred by Client under this Agreement.

10. STATEMENTS AND PAYMENTS. Attorneys will send Client monthly statements showing fees and costs incurred, their basis, any amounts applied from the deposit, and any current balance owed. Any balance due shall be paid in full within 30 days after the statement is mailed. If any monthly statement is not paid in full within 30 (thirty) days of its date, then a late charge of 10% (ten percent) per annum (.83% per month) will accrue on the amount due until final payment is made. In an effort to have Client bring the account or the advance deposit current, Attorneys will give Client prompt notice if Client's account becomes delinquent. If the delinquency continues and Client does not arrange satisfactory payment terms, Attorneys reserve the right to postpone or defer providing additional services, to withdraw from representation, to suspend or terminate any work in progress, and to pursue collection of Client's delinquent account. Client agrees to pay the cost of collecting the debt, including Court costs, filing fees, and reasonable attorney's fees. If Client disputes any portion of Attorneys' billing, Attorneys urge the Client to raise these questions as soon as the Client has any questions, so Client and Attorneys can promptly resolve any problems.

The provisions of this Agreement with respect to the fee arrangement, as well as the amount of any payments on account made by Client, may be disclosed to the court in connection with any application by Attorneys for fees and costs.

11. LIEN ON ALL CLAIMS. Client hereby grants to Attorneys a lien on all claims or causes of action, on any sum recovered by way of settlement, and any judgment that may be recovered thereon, and on any proceeds received in satisfaction of such judgment, in the amount of any unpaid legal fees, if any. Attorneys may retain its unpaid legal fees, if any, out of the amount finally collected by suit, settlement, judgment, administrative decision, award, or other recovery obtained in payment for Attorneys' services. Accordingly, Client will make no settlement with any defendant, adverse party, third person, insurance carrier, or other source except in the presence of Attorneys, and with Attorneys' approval, and should Client do so in violation of this Agreement, Attorneys shall be entitled to immediate reimbursement of any and all costs and expenses advanced, as well as payment of fees on any work completed or in progress, billed or unbilled.

12. DISCLOSURE AND CONSENT REGARDING BUSINESS TRANSACTIONS.

Pursuant to the Rules of Professional Conduct, Rule 3-300, when an attorney enters into a business transaction with a client, which includes acquiring an ownership, possessory, security, or other pecuniary interest adverse to the client, such as a lien on all claims as referenced in the preceding paragraph, the following requirements must be satisfied. The transaction must be fair and reasonable to the client, and fully disclosed and transmitted in writing. In addition, the client must be advised in writing that the client may seek the advice of an independent lawyer of the client's choice, and is given a reasonable opportunity to seek that advice. Accordingly, it is confirmed that Client has been advised that by granting a lien on all claims to Attorneys, Client is entering into a business transaction of a pecuniary interest adverse to Client, and that Client has been advised that Client may seek the advice of independent counsel, and has been given the reasonable opportunity to do so, and Client consents to said transaction.

13. INSURANCE COVERAGE. Unless otherwise agreed in writing, Client will be responsible for payment of Attorneys' invoices directly in accordance with the above billing and payment policies. In the event that Client has insurance coverage, Client will be responsible for seeking reimbursement from Client's insurer(s). If Client retains Attorneys to attempt to obtain insurance coverage for a legal matter Attorneys is handling on Client's behalf, Client will still remain responsible for direct payment of all invoices. If Client does not retain Attorneys to attempt to obtain insurance coverage for a legal matter Attorneys are handling on Client's behalf, Attorneys will cooperate with all reasonable requests for billing and payment information Client may require in connection with any independent efforts Client may have to obtain insurance coverage for Attorneys' fees, but Client will remain responsible for direct payment of all invoices.

14. RESPONSIBILITY FOR FEES AND COSTS. The court may order, or the parties to the dispute may agree, that another party will pay some or all of Client's fees, costs or both. Any such order or agreement will not affect Client's obligation to pay fees and costs under this Agreement, nor will Attorneys be obligated under this Agreement to enforce such an order or agreement. Any such amounts actually received by Attorneys, however, will be credited against fees and costs incurred by Client.

15. DISCHARGE OF ATTORNEY. Client may discharge Attorneys at any time by written notice effective when received by Attorneys. Unless specifically agreed by Attorneys and Client, Attorneys will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Attorneys are Client's attorney of record in any proceeding, Client will execute and return a Substitution of Attorneys form immediately upon its receipt from Attorneys.

Notwithstanding the discharge, Client will remain obligated to pay Attorneys at the agreed rates for all services provided and to reimburse Attorneys for all costs advanced before the discharge.

16. ATTORNEY WITHDRAWAL. Attorneys may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. Circumstances under which the Rules permit such withdrawal include, but are not limited to: (a) Client's consent, (b) Client's conduct renders it unreasonably difficult for Attorneys to carry out the employment effectively, and (c) Client fails to pay Attorneys' fees or costs as required by the Agreement with Attorneys. Notwithstanding Attorneys' withdrawal, Client will remain obligated to pay Attorneys at the agreed rates for all services provided, and to reimburse Attorneys for all costs advanced, before the withdrawal.

17. RESULTS. Although Attorneys may offer an opinion about possible results regarding the subject matter of this Agreement, Attorneys cannot guarantee any particular result. Client acknowledges that Attorneys have made no promises about the outcome and that any opinion offered by Attorneys in the future will not constitute a guaranty.

18. ARBITRATION OF FEE DISPUTES ONLY. If a dispute arises between Attorneys and Client regarding Attorneys' fees under this Agreement and Attorneys file suit in any court other than small claims court, Client will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Profession Code §§6200-6206, in which event Attorneys must submit the matter to such arbitration.

With respect to all disputed fees and costs, all sums due and owing which are not in dispute shall be paid immediately. The remaining sums in dispute shall be arbitrated. Client and Attorneys agree that client has the option to arbitrate any such dispute under the American Rules of the Marin County Bar Association then in effect, under its attorney fee arbitration program, or to arbitrate any such dispute under the arbitration laws of the State of California, as set forth in the Code of Civil Procedure, beginning with §1280 and ending with §1297.337.

19. AUTHORITY OF ATTORNEY. Attorneys are authorized and directed to take whatever actions are, in their discretion, necessary in the prosecution of Client's claim. Client hereby gives to Attorneys the power and authority to execute any and all pleadings, claims, contracts, settlements, drafts, checks, compromises, releases, dismissals, deposits, order and other papers which Client could properly execute and to receive in the name and stead of Client any monies or other things of value in their name and stead of Client which may properly be payable or deliverable to Client on account of any judgment or settlement agreed on in connection with the aforesaid claims of Client.

20. DISCLAIMER. Attorneys have not guaranteed the results in this claim or lawsuit. Litigation is risky, and Attorneys are therefore not willing to predict or guarantee a favorable result.

21. PRIVILEGED COMMUNICATIONS. Client authorizes Attorneys to send and receive privileged communications by using cellular telephones, e-mail, cordless telephones, facsimile machines, despite the risk of possible intercepted transmissions.

22. DOCUMENT RETENTION POLICY. At the conclusion of Attorneys' representation of Client, or at the conclusion of a particular case or file, Attorneys will not maintain a complete copy of Client's files. Attorneys will maintain any original documents that are necessary. For instance, if a settlement agreement calls for continued conduct of one or more parties, Attorneys will retain the documents until such time as performance has been completed. Attorneys will also safeguard any documents that have intrinsic value and return them to Client. During the course of representation, Client will also receive copies of all correspondence and pleadings. Client should safeguard these documents in order to maintain a complete file. Any documents not retained by Attorneys will be discarded. Personal or confidential documents, such as employment records or medical records, will be shredded. Non-sensitive documents will be recycled.

23. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement or promises made on or before the effective date of this Agreement will be binding on the parties. Client acknowledges that Client has read this Agreement before executing it, and fully understands its provisions.

24. SEVERABILITY. If this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

25. MODIFICATIONS. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or by an oral agreement to the extent the parties carry it out.

26. EFFECTIVE DATE. The effective date of this Agreement will be the date when, having been executed by Client, it is received by Attorneys.

The foregoing is agreed to, and each party has received an executed copy:

DATE: _____

FOOTHILL DE ANZA
COMMUNITY COLLEGE

DATE: 6/26/12


PHILLIP A. JARET, ESQ.
JARET & JARET



JARET & JARET
Attorneys at Law
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SAN RAFAEL, CALIFORNIA 94901
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RATE SCHEDULE

PROFESSIONAL STAFF

| <u>Attorneys</u> | <u>Hourly Rate</u> |
|------------------|--------------------|
| Phillip A. Jaret | \$250.00 |
| Robert S. Jaret | \$250.00 |
| Karen Poppy | \$250.00 |
| Paralegal | \$125.00 |

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COSTS

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| In-house photocopies: | .10 cents per copy |
| Computer legal research and database access: | No charge |
| Word processing: | No charge |
| Fax transmissions: | No charge |

Other costs, including, but not limited to, court filing fees, court telephone conference charges, postage, messenger, deposition transcripts, process service, and Federal Express, are billed at the direct cost incurred.