

PROFESSIONAL SERVICES AGREEMENT
(LEGAL SERVICES)

This Professional Services Agreement is entered into between NM School for the Arts, New Mexico public charter school, and Matthews Fox, P.C., a New Mexico professional corporation, this 23 day of May, 2017. The parties agree as follows:

1. The NM School for the Arts ("School") hereby retains Matthews Fox, P.C. (hereinafter "Counsel"), when approved by the School's designee, as legal counsel for the purpose of representing the School in legal matters relating to the charter school's relationship with its authorizer or such other matters. Counsel is retained on an as-requested, as-assigned basis for particular matters referred to it by the School's representative, and not as general counsel to the School. Matters to be worked on by Counsel shall be referred by the designated member of the School's governing body or other designee. Counsel will not be expected to work on any matter not so referred to them, although in an emergency, if issues of importance arise before authorization can be obtained from the School designee, Counsel is authorized to act so as to protect the interests of the School to the extent necessary and reasonable in the circumstances.

2. For their services, Counsel will bill partners at the rate of \$225.00 per hour and associates at \$175.00 per hour for standard legal services and will bill partners at \$285.00 per hour and associates at \$200.00 per hour for services related to private bond transactions, plus applicable gross receipts taxes. To the extent reasonable and necessary, counsel may utilize the services of contract attorneys at \$190.00 per hour and/or paralegals at \$110.00 per hour, plus applicable gross receipts taxes. Monthly statements shall be sent in care of the School's Accounting Office at the address stated in paragraph 19 or as otherwise directed by the governing body. In addition to attorney fees, Counsel's statements may include reasonable and necessary expenses of representation, including but not necessarily limited to extraordinary clerical services and supplies, conference call charges, travel at coach or government rates, on-line research expenses, copying, postage, and express mail service costs. Ordinary overhead of Counsel will not be charged. If Counsel is required to travel to the school's location or any other out-of-Santa Fe location (for Matthews) or Santa Fe or Albuquerque (for Fox), the firm will charge one-half the applicable hourly rate for travel time, plus mileage at the State of New Mexico's approved rate or air travel at actual coach rates.

3. Counsel will submit a detailed statement accounting for all services performed and expenses incurred. If the School does not dispute the statement within thirty days, client shall make payment in full. If the School finds that the services are not acceptable, within thirty days from receipt of Counsel's invoice, School shall provide Counsel a letter of exception explaining its objection to the services, and outlining steps Counsel may take to provide remedial action. Thereafter, if the satisfactory correction is made by Counsel to the invoice, then School shall pay Counsel the total amount of the invoice within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. Counsel may charge interest and/or penalties for failure to make payment within the time specified herein.

4. Upon request, Counsel will give a verbal estimate of the fees and costs which may result from the firm's efforts. It is understood that estimating legal costs is notoriously difficult and, therefore, Counsel may upon request of the School periodically advise of any changes in the initial estimate that may be necessary.

5. **The School agrees to make every effort to avoid entering binding contractual or other legal obligations without prior review of Counsel, and is advised to notify Counsel**

immediately upon any possible claims against the school or any of its personnel for which the School intends to retain Counsel's services.

6. Counsel shall be empowered to file law suits or administrative claims only upon resolution or prior written approval of the School's governing body.

7. The term of this agreement shall begin July 1, 2017 and be for the fiscal year ending June 30, 2018 or as otherwise agreed to by Counsel and the School. Either party may terminate the agreement by notifying the other in writing. Counsel shall be entitled to collect unpaid fees and expenses to the date of termination, plus reasonable fees and expenses for winding up and transition costs.

8. This letter agreement is contingent upon sufficient appropriations and authorization being made by the State of New Mexico Legislature for the performance of this agreement. If sufficient appropriations and authorization are not made by the Legislature, this agreement shall terminate upon written notice by the School to Counsel.

9. Counsel's status shall be at all times as an independent contractor performing professional services for the School, and shall not be considered an employee of the School. Counsel agrees that the services provided pursuant to this agreement are personal and, consequently, this agreement is not assignable. Counsel also agrees that the firm may not subcontract any services requested pursuant to this agreement without prior written consent of the School.

10. Counsel agrees to maintain, for at least three years, detailed time records that indicate the date time and nature of services rendered. These records shall be subject to inspection by the School upon reasonable notice. Counsel will request a written release from the School in the event that such records and documents are to be provided to the School district's auditor or the New Mexico's State Auditor.

11. Any confidential information provided to or developed by the Counsel in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Counsel without the prior written approval of the School.

12. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

13. The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

14. Counsel agrees to abide by all applicable federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Counsel assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Counsel is found not to be in compliance with these requirements during the life of this Agreement, Counsel agrees to take appropriate steps to correct these deficiencies.

15. The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1 (G). By execution of this Agreement, Counsel acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

16. Counsel agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If Counsel fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the School.

17. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

18. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

19. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

NM SCHOOL FOR THE ARTS	MATTHEWS FOX, P.C.
c/o Head Administrator	
275 E. Alameda Santa Fe, NM 87501	1925 Aspen Dr., Suite 301A Santa Fe, NM 87505
Tel: 505.310.4194	Tel: 505.473.3020
Email: cmontoya@nmschoolforthearts.org	Email: pmatthews@matthewsfox.com or sfox@matthewsfox.com
Fax: 505.629.4108	Fax: 505.474.3727

20. If Client is other than a natural person, the individual(s) signing this Agreement on behalf of Client represents and warrants that he or she has the power and authority to bind Client, and that no further action, resolution, or approval from Client is necessary to enter into a binding contract.

21. The total compensation under this Agreement shall not exceed \$60,000 excluding gross receipts taxes.

The parties have executed this Agreement as of the date of signature by the School below.

AGREED:

MATTHEWS FOX, P.C.

Patricia Matthews or Susan B. Fox

Date: _____

NM SCHOOL FOR THE ARTS

Governing Council President
Cindy Montoya
Head Administrator

Date: _____

Date: 5-23-17



Attorneys and Counselors at Law

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WORKING WITH AN ATTORNEY

A charter school's guide to effective communication and use of legal counsel.

There are myriad state and federal laws and rules that affect nearly every aspect of public school operations, in addition to the unique concerns for charter schools. Laws govern nearly every detail of a school's operation, for example: employment, students, charter performance and implementation, facilities, discipline (students and employees), governance, finances, and a host of other matters.

Charter school budgets are always tight, and carving out a sum for attorneys can seem painful. However, **not** anticipating legal expenses that may be used to cover an opportunity to seek timely advice upfront can result in higher legal and related costs down the line (e.g. disputes over onerous contracts). Significantly, violation of laws such as the Open Meetings Act and the Procurement Code can result in criminal penalties and violations. An experienced and competent school attorney can help guide the governing body and the school's administration in the business of operating a school and help minimize disruption caused by threatened legal actions or unintended missteps.

THIS GUIDE COVERS:

1. Contracting the services of an attorney
2. Roles of the school attorney
3. Defining the client
4. Effective communication/Attorney-client privilege

1. CONTRACTING THE SERVICES OF AN ATTORNEY

New Mexico law permits charter schools to contract for professional services. Who signs the contract and the defined scope of work should be discussed with the attorney prior to signing a professional services agreement. It is common for charter school administrators to execute these agreements, but it is just as common for the agreement to be presented to the governing body ("GB") for approval. Unless there is an emergency, it is recommended that the head administrator raise the necessity for hiring counsel at an open meeting of the GB. Some schools sign contracts annually as a preventative measure, which is recommended to avoid a delay when urgent responses are needed.

The New Mexico Procurement Code limits the total amount of a professional services contract to \$60,000 per year. If you anticipate needing legal counsel, it is critical to consider this when creating your annual budget. You must have budget authority to enter into a contract for services of any kind. It is important to remember that schools cannot prepay for services rendered, and thus paying a retainer is inappropriate. Moreover, it is obviously inappropriate to

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
MATTHEWS FOX, P.C.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
 Individual/sole proprietor or single-member LLC
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 C Corporation
 S Corporation
 Partnership
 Trust/estate
 Other (see instructions) ▶ _____
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
 Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)
1925 Aspen Drive, Suite 301A

6 City, state, and ZIP code
Santa Fe, NM 87505

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number									
			-			-			
or									
Employer identification number									
0	1	-	0	5	9	8	6	4	6

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶  Date ▶ **4.4.2017**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.