



Eric Crites <ecrites@nmschoolforthearts.org>

Matthews Fox 2021-22 PSA

1 message

sfox@matthewsfox.com <sfox@matthewsfox.com>
To: "ecrites@nmschoolforthearts.org" <ecrites@nmschoolforthearts.org>

Thu, May 13, 2021 at 10:51 AM

Dear Mr. Crites:

Enclosed is a Professional Services Agreement for the 2021-2022 fiscal year. If approved, the agreement will be effective from the date signed by the school through June 30, 2022, unless terminated prior to that time pursuant to its terms. Your school may issue a purchase order on an as needed basis; however, an agreement in place establishes an attorney-client relationship and often facilitates a quick turnaround on unexpected legal issues presented to the school's administration. If you anticipate needing our legal services prior to the receipt of signatures on the Agreement, please issue a purchase order to cover those services in the interim.

We have traditionally put the Procurement Code small purchases maximum for professional services agreements in the "not to exceed" clause, however, if you prefer, the amount can be reduced. In any event, the school has no obligation to use our firm's services during the year, even if the enclosed professional services agreement is signed and returned to us. Please feel free to ask questions about the agreement or to request that the maximum amount be restated, in which case a new agreement will be prepared and sent to you.

We look forward to working with you and your school. If our contract is approved, please send a signed copy to us for our files.

Sincerely,

Susan B. Fox

Matthews Fox PC

1925 Aspen Drive, Suite 301A

Santa Fe, New Mexico 87505

Tel. 505.473.3020

Fax 505.474.3727

sfox@matthewsfox.com

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This message is confidential and may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, please reply to the sender that you received the message in error, and delete.

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PROFESSIONAL SERVICES AGREEMENT
(LEGAL SERVICES)

This Professional Services Agreement is entered into between New Mexico School for the Arts, a New Mexico public charter school, and Matthews Fox, P.C., a New Mexico professional corporation, this ____ day of _____, 2021. The parties agree as follows:

1. The New Mexico 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 \$250.00 per hour (Matthews) and \$250.00 per hour (Fox), and associates at \$175.00 per hour for standard legal services, and will bill partners at \$350.00 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 head administrator. 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, the Firm will charge 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, 2021 and be for the fiscal year ending June 30, 2022 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:

NEW MEXICO SCHOOL FOR THE ARTS	MATTHEWS FOX, P.C.
c/o Head Administrator	
500 Montezuma Avenue Santa Fe, NM 87501	1925 Aspen Dr., Suite 301A Santa Fe, NM 87505
Tel: 505.310.4194	Tel: 505.473.3020
Email: ecrites@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: _____

NEW MEXICO SCHOOL FOR THE ARTS

Governing Council President
EMAIL ADDRESS: _____

Date: _____

Phone No.: _____

Head Administrator

Date: _____