



Attorneys and Counselors at Law

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May 6, 2020

Jesus Moncada, Principal
Christine Duncan's Heritage Academy
1900 Atrisco Dr. NW
Albuquerque, NM 87120

Re: Enclosed 2020-2021 Professional Services Agreement for Legal Services

Dear Mr. Moncada:

Enclosed is a Professional Services Agreement for the 2020-2021 fiscal year. If approved, the agreement will be effective from the date signed by the school through June 30, 2021, 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 maximum¹ 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 are also enclosing a copy of "Working With An Attorney" and ask that you provide this guide to your governing body members. It is important that your council members are fully informed and that the School and the council have representation. If you or your council members have questions about our role as legal counsel, please do not hesitate to contact us.

¹ The maximum pursuant to NMSA 1978, §13-1-125 (2013) is \$60,000 (sixty thousand dollars).

Jesus Moncada
May 6, 2020
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We look forward to working with CDHA. If our contract is approved, please send a signed copy to us for our files.

Sincerely,
MATTHEWS FOX, P.C.

By: 
Susan B. Fox 

Enclosures: Professional Services Agreement
"Working With An Attorney"

PROFESSIONAL SERVICES AGREEMENT
(LEGAL SERVICES)

This Professional Services Agreement is entered into between Christine Duncan's Heritage Academy, a New Mexico public charter school, and Matthews Fox, P.C., a New Mexico professional corporation, this ____ day of _____, 2020. The parties agree as follows:

1. The Christine Duncan's Heritage Academy ("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 \$300.00 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, 2020 and be for the fiscal year ending June 30, 2021 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:

CHRISTINE DUNCAN'S HERITAGE ACADEMY	MATTHEWS FOX, P.C.
c/o Head Administrator	
1900 Atrisco Dr. NW Albuquerque, NM 87120	1925 Aspen Dr., Suite 301A Santa Fe, NM 87505
Tel: 505.839.4971	Tel: 505.473.3020
Email: jmoncada@christineduncan.org	Email: pmatthews@matthewsfox.com or sfox@matthewsfox.com
Fax: 505.831.9027	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: _____

CHRISTINE DUNCAN'S HERITAGE ACADEMY

Governing Council President

Date: _____

EMAIL ADDRESS: _____ Phone No.: _____

Head Administrator

Date: _____



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Susan Barger Fox
sfox@matthewsfox.com

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 pay an

attorney for services not rendered. In short, the school is not and should not be charged for services unless the attorney is consulted and performs requested services.

Most attorneys bill monthly. Attorney bills should include sufficient detail to apprise the school's administration of the services rendered and that the services provided were within the scope of the contract. Should you have any questions about your attorney's bill, you can and should contact the attorney immediately for clarification and discussion. The New Mexico Procurement Code requires a public entity to either dispute or pay invoices within a certain amount of time after receipt of the invoice. If you have questions, ask!

Finally, public school law is fairly specialized, but includes areas of even greater specialty, such as bond matters and litigation. Both the administrator and the GB should feel comfortable asking for references, credentials and the experience of the attorneys who are being considered to represent the school in the context of the issue at hand.

2. ROLES OF THE SCHOOL ATTORNEY

Ultimately, an effective attorney's role is to assist the school in achieving its goals; obviously, within legal parameters. It is important that "prevention" does not create "inertia." It is the attorney's role to advise the client of legal ramifications of decisions and to assist in shaping outcomes in the most favorable way, within the bounds of the law. The ultimate decision as to whether or not to take a particular action, however, remains with the client.

Generally, school counsel will act as an advisor to school officials on an 'as-requested' or 'on-call' basis; that is, unless your attorney is 'in-house' (e.g. an employee of the school), he/she is not and should not be presumed to know everything about your school's situation – you must proactively seek legal assistance from your lawyer when you think you might need it for particular situations. Some of the situations that may give rise to attorney involvement are listed below. These situations typically arise within the context of school administration and, thus, are examples where the head administrator is likely to need to consult counsel directly.

However, governing bodies also need the freedom to contact the school's lawyers. Frequently questions arise about open meetings, facilities, relationships with the charter's authorizer, and other questions concerning implementation of the charter.

The role of a school attorney includes that of an advisor-counselor, educator, facilitator or mediator, advisor to management/administration, draftsman (policies, etc.), advocate in disputes, spokesperson and negotiator. Here are some specific instances where schools should consider attorney involvement:

- ❖ Providing legal opinions;
- ❖ Creating, updating and advising on school policies and procedures (employment, student and others);
- ❖ Attending governing body meetings (when necessary and requested);
- ❖ Drafting and reviewing contracts;
- ❖ Assuring compliance with state and federal laws affecting, finance, personnel, student rights, etc.;
- ❖ Negotiating and assisting with charter authorizer relationships;
- ❖ Faculty and staff discipline, reductions in force and dismissals;
- ❖ Assistance with Open Meetings Act and Inspection of Public Records compliance;
- ❖ Review circumstances that may give rise to legal actions;

- ❖ Conduct in-service seminars or training for GB members, faculty and staff:
- IN THESE CIRCUMSTANCES IT IS STRONGLY RECOMMENDED THAT YOU CONTACT COUNSEL AS SOON AS POSSIBLE to allow for scheduling;
- ❖ Served with a legal demand letter, court order (includes subpoenas) or a lawsuit;
 - ❖ Threat or suggestion of revocation or nonrenewal of charter contract;
 - ❖ Accident or incident involving a student or employee resulting in bodily injury;
 - ❖ Contemplating discharge of a contracted employee.

This list is not exhaustive, and you should contact your attorney whenever you believe that his/her advice, counsel and involvement would assist or be beneficial to the School.

3. DEFINING THE CLIENT

It is important to understand that if retained by the charter school, the attorney represents the institution, not any single member of the faculty, staff or the GB. An attorney often establishes a relationship with the administrator because the administrator deals with the day-to-day running of the school, and this can be confusing to GB members. It is critical to understand, however, that an attorney is ethically obligated to clarify his or her role in this regard should a situation arise. It is essential that the head administrator be transparent with the GB about his/her contacts with the attorney to avoid any misunderstanding about the attorney's role.

4. EFFECTIVE COMMUNICATIONS/ATTORNEY-CLIENT PRIVILEGE

- ❖ To avoid confusion, and escalating legal fees, it is important to identify the “authorized” school representatives who may contact the attorney directly. This will avoid misunderstandings by both counsel and the client. Generally, experience shows that for charter schools the head administrator and GB chair are the primary initiators of contact. For budget reasons, the frequency of these contacts should be considered.

- ❖ Occasionally, it may be appropriate for other school personnel or GB members to directly contact the attorney; however, advise your lawyer if you have previously established authorized contacts and that others have been given permission to contact counsel.

- ❖ The attorney-client privilege allows clients to speak freely to their attorney. It is the “client’s right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney.” This privilege can be waived, and because there are multiple persons who serve the school, it is important that the privilege be protected.

NOTE: This guide is intended to give a brief overview of how to work with your school’s attorney; it does not contemplate every scenario that may arise where legal assistance or advice may be recommended or advisable. If you are unsure whether the matter demands legal attention, it is better to contact your lawyer out of an abundance of caution and determine that you’ve handled the situation correctly, rather than to later learn that earlier legal intervention would have simplified the outcome.