

## CITY OF SANTA FE

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into by and between the City of Santa Fe (the "City") and CARL G. BOAZ, INC. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

**1. SCOPE OF SERVICES**

The Contractor shall provide the following services for the City:

A. Appear at meetings of the Governing Body, scheduled through the City Clerk; operate and maintain electronic recording equipment; produce and preserve a recoverable audio record of the verbal proceedings of all meetings covered; and take a stenographic or speed writing record of proceedings during the progress of a meeting; and have the ability to read back, when requested, verbatim comments of involved parties. The Contractor shall provide a qualified substitute to fulfill such requirements in the absence of the Contractor. This shall be done at the Contractor's sole expense and the Contractor shall notify the city clerk's office of a substitute.

B. Accurately transcribe meeting records in the form of minutes in a cogent, articulate and comprehensive form to preserve a complete, accurate and legally sufficient record of conduct of all meetings. Verbatim transcripts shall be included in the minutes at no additional charge to the City. Transcriptions with an original signature of the Transcriber shall be submitted to the City Clerk no later than seven calendar days following each meeting. An electronic version of the minutes will be accepted on the seventh day; however payment will not be made until the original transcription with

original signature is submitted to the City Clerk. The Contractor shall provide a qualified substitute to fulfill such requirements in the event the Contractor is unable to perform. This shall be done at the Contractor's sole expense.

C. Attend meetings at all hours of the work day, including evenings and night meetings. Some weekend work may be required. The Contractor must furnish reliable personal transportation in order to attend required meetings wherever the location.

D. Approved additions or corrections to the minutes shall be made by the Contractor and submitted to the City Clerk's Office.

E. In addition to the transcriptions submitted, the Contractor shall provide the approved minutes by E-Mail or on a high-density disk (Microsoft Word compatible) to the City Clerk's office for placement on the City of Santa Fe's Web page. Failure to include the transcriptions with an original signature and the e-mailed copy will result in a delay of payment.

F. Provide duplicate copies of meeting tapes at the request of the City Clerk.

G. Prepare an index for each set of minutes.

H. At the Contractor's expense, obtain status as a Notary Public for the State of New Mexico prior to execution of this Agreement.

I. Obtain a Federal Tax ID number, New Mexico CRS number and local business license, prior to execution of this Agreement.

J. Provide Deliverable Products as follows:

(1) The Contractor shall deliver the products required in the above sections in accordance with the stated provisions. The City Clerk will verify the acceptance of submitted products in order to ensure that the products meet the specifications agreed to in this Agreement.

(2) All submitted products will be reviewed by the City Clerk to determine whether or not the products are acceptable. The City reserves the right to request replacement services and products for damaged goods, goods that do not meet minimum requirements, or goods that do not appear to be correct.

## **2. STANDARD OF PERFORMANCE; LICENSES**

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

## **3. COMPENSATION**

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed seven thousand dollars (\$7,000), plus applicable gross receipts taxes, for the term of this Agreement.

B. The total amount of this Agreement shall be broken down as follows:

(1) six hundred and twenty-five dollars (\$625.00) per regular meeting;  
and

(2) The sum of seventy dollars (\$70.00) appearance fee and an hourly rate of twenty-five dollars and fifty cents (\$25.50) per hour transcribing the minutes

of special meetings. For special meetings in excess of three hours in length, Contractor shall be paid a rate of twenty-two dollars (\$22.00) per additional hour.

(3) An hourly rate of twenty dollars (\$20.00) per hour for tape dubbing.

C. Payment shall be made upon receipt of detailed statements containing a report of services completed and disposition of same. Failure to include the transcription with an original signature and the e-mailed copy will result in a delay of payment.

D. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

E. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

#### **4. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

#### **5. TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the City and terminate on June 30, 2018, unless terminated sooner pursuant to Article 6 below. The term of this Agreement may be extended for an additional period of 3 years, not to exceed four years, by a written amendment in accordance with the terms of this Agreement.

**6. TERMINATION**

This Agreement may be terminated by the City upon 60 days written notice to the Contractor.

A. The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

B. If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

C. If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

**7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

**8. CONFIDENTIALITY**

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

**9. CONFLICT OF INTEREST**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

**10. ASSIGNMENT; SUBCONTRACTING**

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

**11. RELEASE**

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and

obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **12. INSURANCE**

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance

of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**13. INDEMNIFICATION**

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

**14. NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**15. THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

**16. RECORDS AND AUDIT**

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of



services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

**17. APPLICABLE LAW; CHOICE OF LAW; VENUE**

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**18. AMENDMENT**

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

**19. SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement.

This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**20. NON-DISCRIMINATION**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

**21. SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

**22. NOTICES**

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:  
City Clerk's Office  
P.O. Box 909  
Santa Fe, New Mexico 87504

Contractor:  
Carl G. Boaz, Inc.  
4517 Samara Road, NW  
Albuquerque, NM 87120-5257

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

  
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BRIAN K. SNYDER, CITY MANAGER

DATE: 04/02/2018

ATTEST:

Yolanda Y. Vigil  
YOLANDA Y. VIGIL, CITY CLERK

all

CONTRACTOR:  
CARL G. BOAZ, INC.

Carl Boaz President  
(Name & Title)

CRS #02-968743-00-08  
City of Santa Fe Business  
Registration #17-111372

APPROVED AS TO FORM:

Kelley A. Brennan 3/23  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

Adam Johnson 4-2-18  
ADAM JOHNSON, DIRECTOR  
FINANCE DEPARTMENT

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Business Unit/Line Item: 12006.510300