

**CITY OF SANTA FE  
LEGAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the City of Santa Fe (the "City") and Graeser Law Firm, LLC, Attorneys at Law (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 conduct adjudicatory hearings related to liquor license applications and waivers of distance requirements from churches or schools, when applicable, for liquor license applications, special dispenser permits and public celebration permits. Christopher L. Graeser, Esq. (Graeser) shall provide such services, on behalf of the Contractor, in accordance with the provisions of Ordinance No. 2018-22, attached hereto as Exhibit A, and the New Mexico Liquor Control Act.

**2. STANDARD OF PERFORMANCE; LICENSES**

A. The Contractor represents that Graeser 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.

**3. COMPENSATION**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed at the rate of one hundred fifty dollars (\$150.00) per hour, such compensation not to exceed ten thousand dollars (\$10,000), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$843.75) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$10,843.75). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor 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. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

### 3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **December 31, 2019**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

### 4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives

issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

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. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. 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.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor 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 Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

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 Section 38-3-1 (G) NMSA 1978. By

execution of this Agreement, Contractor 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.

**18. Workers Compensation.**

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

**19. Professional Liability Insurance.**

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.

**20. Other Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

(1) Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.

(2) Property damage or combined single limit coverage: \$1,000,000.

(3) Automobile liability (including non-owned automobile coverage): \$1,000,000.

(4) Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such

certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

**21. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**22. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

**23. Invalid Term or Condition.**

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.

**24. Enforcement of Agreement.**

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.

**25. Notices.**

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:

To the City: Yolanda Y. Vigil, City Clerk  
City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, NM 87501  
[yyvigil@santafenm.gov](mailto:yyvigil@santafenm.gov)

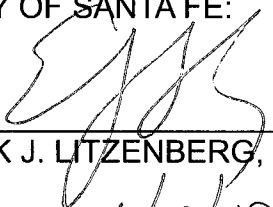
To the Contractor: Christopher L. Graeser  
Graeser Law Firm, LLC  
316 E. Marcy Street  
Santa Fe, NM 87501  
[chris@tierralaw.com](mailto:chris@tierralaw.com)

**26. Authority.**

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
ERIK J. LITZENBERG, CITY MANAGER

DATE: 12/12/18

GRAESER Law Firm, LLC:

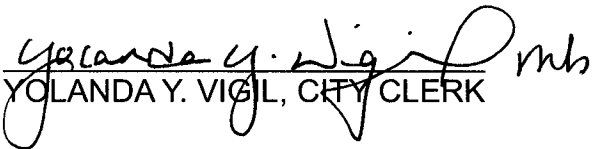
  
CHRISTOPHER L. GRAESER

DATE: 12/10/2018

CRS# 03 -076563 -003

City Business  
Registration # 18-00125142

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

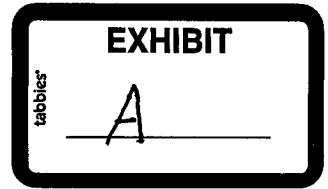
APPROVED AS TO FORM:

  
ERIN K. McSHERRY, CITY ATTORNEY

APPROVED:

  
\_\_\_\_\_  
MARY McCOY, FINANCE DIRECTOR *mm*

12006.510300  
Business Unit Line Item



CITY OF SANTA FE, NEW MEXICO  
ORDINANCE NO. 2018-22

AN ORDINANCE

AMENDING CHAPTER 4 SFCC 1987 TO DESIGNATE A HEARING OFFICER TO CONDUCT PUBLIC HEARINGS RELATED TO LIQUOR LICENSE APPLICATIONS AND WAIVERS OF DISTANCE REQUIREMENTS FROM CHURCHES OR SCHOOLS, WHEN APPLICABLE, FOR LIQUOR LICENSE APPLICATIONS, SPECIAL DISPENSER PERMITS AND PUBLIC CELEBRATION PERMITS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 4-4.3 SFCC 1987 (being Ord, #1968-6, § 3, as amended) is repealed and a new Subsection 4-4.3 is ordained to read:

**4-4.3 [NEW MATERIAL] Issuance or transfer of liquor licenses.**

A. **Duties of city clerk.** Upon receipt of a letter of preliminary approval or conditional preliminary approval of the issuance or transfer of a liquor license by the director of the New Mexico alcohol and gaming division (hereinafter "AGD") the city clerk shall:

(1) Set the tentative public hearing date and if necessary, request a waiver or extension from AGD, if the city is unable to meet either the 45-day public hearing date requirement or the 30-day publication date requirement.

(2) Notify city staff, including, geographic information system mapping (GIS), code enforcement, fire department and traffic engineering of the request for a city liquor license, for preparation of reports related to litter, noise and traffic, and ensure that applicant is in compliance with city fire and land use codes. GIS staff will provide a map indicating

1 whether the proposed licensed premise is within 300 feet of a church or school. This  
2 information shall be provided to the hearing officer.

3 (3) Notify a hearing officer, designated by the governing body in accordance  
4 with Paragraph B., below, of the receipt of the letter of preliminary approval or conditional  
5 preliminary approval for a liquor license issuance or transfer. If the hearing officer is unable  
6 to serve, the city clerk shall notify another hearing officer until a hearing officer has agreed to  
7 conduct the meeting. The city clerk shall also notify the hearing officer of any related request  
8 for a waiver of the 300-foot location restriction between the proposed licensed premise and  
9 any church or school (hereinafter "waiver").

10 (4) Prepare the legal notice of the public hearing in the manner provided by the  
11 New Mexico Liquor Control Act (hereinafter "Liquor Control Act"). The applicant shall pay  
12 the cost of the publication.

13 **B. Designation of hearing officer.**

14 (1) As authorized by Section 60-6B-4(E) NMSA 1978, the governing body may  
15 designate, from a list provided by the city manager, two or more hearing officers to conduct  
16 public hearings.

17 (2) For purposes of this section, a hearing officer shall be a licensed member of  
18 the New Mexico Bar. The city manager shall advertise for the position of hearing officer.  
19 The term of a hearing officer shall be four years.

20 (3) The city clerk shall keep the list of hearing officers designated by the  
21 governing body.

22 **C. Duties of hearing officer.** The hearing officer shall notify the city clerk within two  
23 (2) business days if the hearing officer can serve and shall, within forty-five (45) days of receipt by  
24 the city of the AGD letter of preliminary approval or conditional preliminary approval of a liquor  
25 license issuance or transfer, hold a public hearing regarding the applicant's request.

1           D.     **Waivers.** The hearing officer may recommend to the governing body that it grant or  
2 deny a waiver pursuant to Section 60-6B-10 NMSA 1978.

3           E.     **Procedure at public hearing.**

4               (1)     The applicant may be represented by an attorney at the public hearing.

5               (2)     Rules of evidence shall not be followed. The hearing officer may consider  
6 evidence, oral or written, which may be presented if such evidence is relevant.

7               (3)     The grounds for approval or denial are set forth in the Liquor Control Act.

8               (4)     Prior to allowing for oral testimony, the hearing officer shall swear in every  
9 person who will provide testimony.

10          F.     **Recommendation of hearing officer.** The hearing officer shall, no later than the  
11 seventh calendar day following any hearing, forward to the city clerk their recommendation of  
12 approval or denial, which shall be supported by findings and conclusions, together with a record,  
13 which shall be made of such hearing as provided by law. The city manager may, upon email request  
14 from the hearing officer, and a showing of good cause and determination that the request can still be  
15 voted on by the governing body in a timely manner, send an email to the hearing officer granting  
16 additional time to provide such recommendation. The city clerk, upon receipt of the  
17 recommendation, shall place it on the next governing body consent calendar agenda.

18          G.     **Duties of governing body.** The governing body, within 30 days after the public  
19 hearing before the hearing officer, shall consider, at a public meeting of the governing body, the  
20 recommendations of the hearing officer, which shall be on the consent calendar.

21               (1)     If the item is not removed from the consent calendar, the governing body's  
22 vote to approve the consent calendar shall constitute its concurrence with the hearing officer's  
23 recommendation. The city clerk shall notify AGD, on a form prescribed by AGD, of the  
24 governing body's decision, no later than 30 days after the public hearing before the hearing  
25 officer.

1           (2) Any member of the governing body may remove the hearing officer's  
2 recommendation from the consent calendar for discussion. The governing body shall not  
3 take additional evidence or testimony and shall only conduct deliberations of the request  
4 based on the record provided. The governing body shall then vote on the request.

5           (a) If the governing body votes to approve the request, the city clerk  
6 shall notify AGD, on a form prescribed by AGD, of the governing body's decision,  
7 no later than 30 days after the public hearing before the hearing officer.

8           (b) If the governing body, based on the preponderance of the evidence,  
9 votes to disapprove the request, it shall set forth the reasons for the disapproval as  
10 required under the Liquor Control Act. The city clerk shall send to AGD, no later  
11 than 30 days after the public hearing before the hearing officer, a copy of the record  
12 of the public hearing, the minutes of the governing body meeting and the notice of  
13 disapproval on a form prescribed by AGD.

14           (3) If the governing body remands the request back to the hearing officer beyond  
15 the time required in the Liquor Control Act, or does not reach a decision within 30 days after  
16 the public hearing before the hearing officer, the governing body is aware that AGD, pursuant  
17 to the Liquor Control Act, may approve the request prior to the governing body's final  
18 decision on the matter.

19       **H. Appeal.** Any person aggrieved by the decision of the governing body may appeal in  
20 the manner provided by law.

21       **Section 2. Section 4-4.5 SFCC 1987 (being Ord. #1968-6, as amended) is amended**  
22 **to read:**

23       **4-4.5 Special dispenser and public celebration permits.**

24       A. Any person granted a special permit under the provisions of Section 60-6A-12  
25 NMSA 1978 for use within the city, shall pay in advance a fee of twenty-five dollars (\$25.00) per day

1 for each day that the permittee is to dispense liquor.

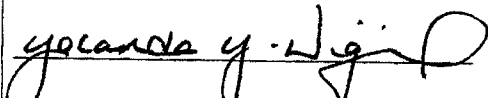
2 B. If the location of the event is within 300 feet of a church a school, then a designated  
3 hearing officer shall conduct a public hearing, for a waiver, pursuant to the applicable provisions of  
4 Subsection 4-4.3 SFCC 1987.

5 PASSED APPROVED and ADOPTED this 12<sup>th</sup> day of September, 2018.

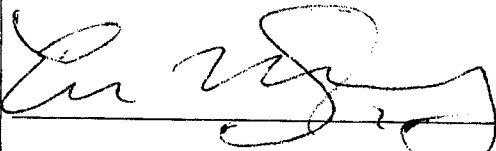
6  
7  
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9 ALAN M. WEBBER, MAYOR

10 ATTEST:

11  
12   
13 YOLANDA Y. VIGIL, CITY CLERK

14 APPROVED AS TO FORM:

15   
16  
17 ERIN McSHERRY CITY ATTORNEY

18  
19  
20  
21  
22  
23  
24  
25 *M/Legislation/Ordinances 2018/2018-22 Liquor Hearing Officer*