

TERMS OF ENGAGEMENT

This document sets forth the terms of engagement as Town Attorney. Unless modified in writing by mutual agreement, these terms are an integral part of the agreement.

RECITALS: The Town issued a Request for Proposals in May 2018 (the "RFP") for legal services. Pierce Coleman responded to the RFP. The RFP and Pierce Coleman's response to the RFP are incorporated herein by reference.

SCOPE: The Town of Fountain Hills, Arizona (the "Town") retains Pierce Coleman PLLC (the "Firm") as its contract Town Attorney to provide general legal services as typically provided by a Town Attorney and in accordance with the Town Code. This Agreement shall be effective September 19, 2018 through August 31, 2019.

The Firm will at all times act on behalf of the Town to the best of the Firm's ability. Any expressions on the part of Pierce Coleman concerning the outcome of Town legal matters are expressions of the Firm's best professional judgment, but are not guarantees. Such opinions are necessarily limited by the Firm's knowledge of the facts and are based on the state of the law at the time they are expressed.

Customarily, each client of the Firm is served by a primary attorney contact. The primary attorney should be someone in whom the Town has confidence and with whom the Town enjoys working. The Town can request a change of primary attorney at any time. Subject to the supervisory role of the primary attorney, the Town's work, or parts of it, may be performed by other lawyers and legal assistants in the Firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, the Firm will advise the Town of the names of those attorneys and legal assistants who work on Town matters.

The Firm will keep track of time and send monthly "shadow" invoices for time worked such that the Town and Pierce Coleman may compare the actual time to the flat fee amount. The Firm will keep track of time based on the following hourly rates: \$250/hr. for Partners; \$175/hr. for Associates; and \$75/hr. for Paralegals.

FLAT FEE: The Town retains Pierce Coleman PLLC on a flat fee basis. The flat fee shall be \$180,000. This amount shall be paid in monthly installments: \$15,000 per month, payable upon receipt of the invoice from Pierce Coleman PLLC.

COSTS AND EXPENSES: The Town agrees to pay for all actual out-of-pocket costs and expenses the Firm incurs on the Town's behalf. Typical costs and expenses include: filing fees, service of process, depositions, expert witness fees, travel costs and expenses, FedEx costs, courier services, and delivery charges, photocopying at \$.10 per page, and wire transfers.

The Firm may elect to cover other certain out-of-pocket costs and expenses on the Town's behalf, but reserves the right to seek reimbursement from the Town. The Town agrees to reimburse Pierce Coleman for such out-of-pocket costs and expenses. Pierce Coleman will not incur costs and expenses in excess of \$250 on the Town's behalf without first obtaining the Town's consent.

TERMINATION OF REPRESENTATION AND POST-REPRESENTATION MATTERS: The Town may terminate this representation at any time, subject to Pierce Coleman's obligations under the Rules of Professional Conduct adopted by the Arizona Supreme Court (Rule 42) and the approval of the court if a matter is in litigation.

REFUND: If the Town terminates the representation before Pierce Coleman has provided all legal services described in this agreement, the Town may be entitled to a refund of all or part of the flat fee based on the value of the legal services performed prior to termination.

DOCUMENT RETENTION: At the end of our representation, Pierce Coleman will retain the hard copy or electronic version of the Town's file, unless requested by the Town. If the Town does not want the file, the Town agrees that the file may be destroyed in accordance with Pierce Coleman's document retention policy. Currently, it is Firm policy to destroy files five years after the termination of a representation.

ARBITRATION OF FEE DISPUTES: If a dispute arises between the Town and Pierce Coleman regarding fees, the parties agree to resolve that dispute through the Arizona State Bar's Fee Arbitration Program. Either party may initiate fee arbitration by contacting the State Bar's Fee Arbitration Coordinator at 602.340.7379.

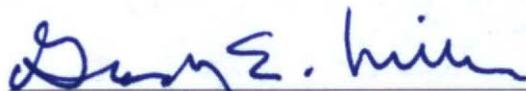
NO ADVICE REGARDING THIS FEE AGREEMENT: Pierce Coleman is not acting as the Town's counsel with respect to this Agreement. If the Town wishes to be advised on whether it should enter into this Agreement, Pierce Coleman recommends that you consult with independent counsel of your choice.

CANCELLATION: This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

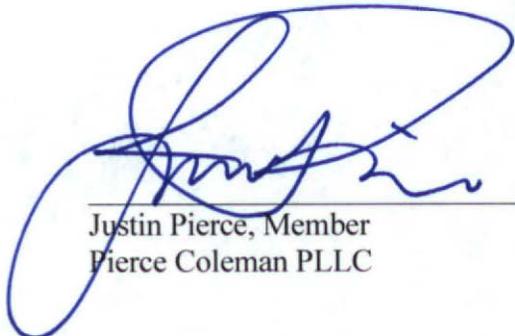
ISRAEL: Pursuant to A.R.S. § 35-393, Pierce Coleman certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel.

NO GUARANTEES HAVE BEEN MADE AS TO THE FINAL OUTCOME IN ANY TOWN LEGAL MATTERS.

DATED this ____ day of September 2018.


Grady E. Miller, Town Manager
Town of Fountain Hills, Arizona

DATED this 20th day of September 2018.


Justin Pierce, Member
Pierce Coleman PLLC



September 10, 2018

VIA ELECTRONIC MAIL

David Trimble
Administrative Services Director
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268
Email: dtrimble@fh.az.gov

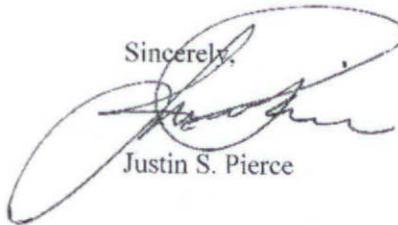
Re: RFP Town of Fountain Hills – Proposed Fee for Legal Services

Dear Mr. Trimble:

During our interview for the Town Attorney position on September 5, 2018, several members of the Council inquired about the arrangement proposed by Pierce Coleman (the "Firm") to provide contract attorney services using a flat fee model. In the Firm's Response to the Town's Request for Proposals, the Firm proposed a flat fee of \$225,000 annually. One of the Councilmembers asked about the possibility of reducing the proposed fee to \$180,000 annually. I responded that such an arrangement would likely be feasible.

It is my understanding that you subsequently spoke with my colleague, Aaron Arnson, on September 6, 2018, and informed him that the Council wishes to obtain written confirmation that the proposed reduced fee would in fact be acceptable to the Firm. This letter is to confirm that, upon being selected to serve in as the contract Town Attorney, a \$180,000 annual fee for the first year of services would be acceptable to the Firm. As stated in the Response to the Request for Proposals, this fee is subject to adjustment on an annual basis. Please do not hesitate to contact me if you require anything further.

Sincerely,



Justin S. Pierce

JSP/kmc

**PROPOSAL TO
TOWN OF FOUNTAIN HILLS
FOR TOWN ATTORNEY SERVICES**

Submitted: June 28, 2018

Submitted by:



PIERCE COLEMAN

**7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260**

**4711 E. Falcon Dr., Suite 111
Mesa, Arizona 85215**

**602-772-5506 / 877-772-1025 (Fax)
justin@piercecoleman.com**

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Table of Contents

Letter of Transmittal	1
Firm Qualifications	2 – 7
Background and History.....	2
Location and Offices.....	2
Attorney Assigned to Represent Town and Who Will Attend Town Council Meetings Regularly.....	2-5
Legal Services to be Provided in Role as Town Attorney.....	5
Structure of Working Relationship in Role as Town Attorney.....	5
Keeping Town Council and Town Manager Informed.....	5
Response Time to Inquiries.....	5
Response Time to Public Records Requests.....	5
Tracking and Management of Legal Costs.....	5-6
Proactive Advice to Town Council, Town Manager and Staff regarding Legal Developments.....	6
Coordination of Work with Town Manager and Town Department Heads.....	6
Experience with Project Negotiation, Development Agreements, and Drafting & Implementation of Other Agreements and Contracts (i.e. lease, purchase) and Litigation.....	6
Evaluation Process for Staffing a Case, Providing Expert Advice or Providing Other Needed Services ...	6-7
Firm’s Practices Regarding Professional Development Training.....	7
Systems & Mechanisms for Establishing Regular Reporting of Status of Projects, Requests, and Litigation	7
Reports for Town Council and Town Manager.....	7
Legal Services on Code Compliance Issues.....	7
Suggested Processes for Transmittal of Requests and Other Material to Town Attorney.....	7
Monthly Itemized Statements and Annual Audit.....	7
Certification of Proposal Form	8
Business Information Form	9
Non-Collusion Affidavit	10
References	11
Conflicts of Interest	12
Insurance	13
Cost of Proposal	14 – 15
General Services.....	14
Special Services.....	14
Cost Containment.....	14
Billing Method.....	14
Reimbursable Expenses.....	14
Adjustments.....	15
Maximum Annual Expenditure Cap.....	15
Monthly Retainer/Billable Hours.....	15
Exhibits	16 – 24
Exhibit A – Attorney Justin S. Pierce Resume.....	16-17
Exhibit B – Sample Status Report.....	18-21
Exhibit C – Sample Billing Statement.....	22



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JUSTIN S. PIERCE
Justin@PierceColeman.com

Tel 602 772 5506
Fax 877 772 1025

June 28, 2018

David Trimble
Administrative Services Director
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

Re: RFP Town of Fountain Hills – Town Attorney Services

Dear Mr. Trimble:

Pierce Coleman PLLC is pleased to submit this response to the Town's RFP for Town Attorney Services. Pierce Coleman PLLC is well positioned to provide the Town a positive commitment to perform the services within the proposed contract's specified time period.

Pierce Coleman PLLC is a professional limited liability company and is led by two members: Justin S. Pierce, Member, and Stephen B. Coleman, Member. The firm maintains two offices for better client service, one located in North Scottsdale and one located in Mesa.

The firm has significant experience representing public entities across the entire State of Arizona. For instance, the firm is the sole provider of employment law services to the Arizona Municipal Risk Retention Pool (AMRRP), which is an insurance pool comprised of over 70 municipalities in Arizona, and of which the Town of Fountain Hills is a member. The firm also represents the City of Tolleson and the City of El Mirage as those cities' contract City Attorney. Therefore, as discussed in more detail in the attached response, Pierce Coleman is uniquely qualified to assist the Town of Fountain Hills as its Town Attorney.

Again, Pierce Coleman PLLC appreciates the opportunity to submit this response to the Town's RFP for Town Attorney Services. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin S. Pierce", written over a circular scribble.

Justin S. Pierce

JSP/kmc

FIRM QUALIFICATIONS

A. Background and History

Pierce Coleman PLLC was established in March 2015. The firm is structured as a professional limited liability company, and is led by two members: Justin Pierce and Steve Coleman. Kylie TenBrook is a Partner with the firm; Aaron D. Arnson is an Associate with the firm. The firm is also supported by an Office Administrator/Paralegal with over a decade of experience in the legal profession.

Combined, the attorneys have 47 years of experience in the private practice of law, primarily in the area of Labor and Employment. Justin, Steve, and Kylie have been listed in Southwest Super Lawyers®, Steve has been listed in Best Lawyers in America®, and the firm has been ranked by U.S. News – Best Lawyers® as one of its “Best Law Firms.”

Prior to establishing Pierce Coleman PLLC, Justin and Steve were Shareholders at one of the largest and most respected employment defense firms in the country, Jackson Lewis, P.C. Justin and Steve left to establish Pierce Coleman PLLC with the goal of delivering large firm lawyer expertise without the overhead associated with such a firm, thus exceeding clients’ expectations with effective representation at a more affordable price.

Justin, Steve, Kylie, and Aaron have spent much of their careers representing municipalities, and therefore are uniquely versed in the complexities and nuances of municipal law. They have many years of experience handling lawsuits involving alleged violations of the First Amendment, the Due Process Clause, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. The attorneys at Pierce Coleman have conducted internal investigations for numerous governmental clients, and have provided advice and counseling on compliance with employment statutes and regulations. Since 2017 the firm has also represented the Cities of Tolleson and El Mirage as those cities’ City Attorney.

Since the firm’s inception, Pierce Coleman has been the exclusive provider of employment law work for the Arizona Municipal Risk Retention Pool (AMRRP), which is an insurance pool comprised of over 70 municipalities in Arizona, as well as the League of Arizona Cities and Towns.

B. Location and Offices That Would Serve the Town of Fountain Hills

The firm maintains two offices for better client service, one located in North Scottsdale and one located in Mesa and would serve the Town of Fountain Hills from both offices. Our offices are at:

7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260

4711 E. Falcon Drive, Suite 111
Mesa, Arizona 85215

C. Attorney Assigned to Represent the Town of Fountain Hills and Who Will Attend Town Council Meetings Regularly

Below are biographies for the firm’s attorneys that discuss their qualifications. Justin Pierce will be the primary contact attorney (whose complete resume is attached as Exhibit A.), however, Aaron Arnson and Kylie TenBrook would also be involved significantly and may attend Council meetings on occasion.

Justin Pierce Biography

After graduating from Georgetown University, Justin was admitted to the State Bar of Arizona in 2003, and began his legal career as one of two law clerks to the Chief Justice of the Arizona Supreme Court. He has been with the firm since its inception in March 2015.

Justin represents private and public employers in wrongful termination, harassment, and discrimination claims before various government agencies charged with investigating and prosecuting employment claims, such as the Equal Employment Opportunity Commission, U.S. Department of Labor, and the Civil Rights Division of the Arizona Attorney General's Office, as well as in courts of various jurisdiction. He has litigated cases in the Arizona Superior Court, the Arizona Court of Appeals, and Arizona Supreme Court, as well as the U.S. District Court for the District of Arizona. He has also briefed and personally argued multiple cases at the Ninth Circuit Court of Appeals.

Justin has significant trial experience, having served as the lead trial attorney in dozens of cases before county, community college, and municipal personnel appeal boards, as well as private arbitrations, trials to the court, and as the lead trial attorney in a labor arbitration on behalf of a Fortune 500 company.

Justin has also represented multiple local boards of the Public Safety Personnel Retirement System and has counseled those boards regarding to their legal duties in granting or denying disability pensions to members of the system. Justin also represents the Maricopa County Employee and Law Enforcement Merit System Commission as the Commission's attorney.

Justin is the primary contact attorney for the cities of Tolleson and El Mirage, for whom the firm is the City Attorney.

Justin is a frequent speaker before business and employer associations, including the International Public Management Association (IPMA) – HR, and the Society for Human Resource Management (SHRM). He served on the faculty of the Defense Research Institute for its 2015 national conference for Governmental Tort and Civil Rights Liability.

Steve Coleman Biography

After graduating from Georgetown University, Steve was admitted to the State Bar of Arizona in 2002. He has been with the firm since its inception in March 2015.

Steve Coleman has represented management-side clients in employment matters for approximately 16 years. His practice focuses on all facets of employment law, with a primary emphasis on defending public employers in lawsuits involving alleged violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the First Amendment, the Due Process Clause, the Equal Protection Clause, the Fair Labor Standards Act, and state law discrimination and retaliation statutes.

His practice also encompasses representation of clients in proceedings before the Equal Employment Opportunity Commission, the Arizona Civil Rights Division, the Department of Labor Wage and Hour Division, and other administrative agencies.

Steve has served as lead counsel for governmental entities in dozens of employment law matters and has been involved in multiple jury trials, personnel appeal hearings, and other evidentiary proceedings. He has filed numerous successful motions to dismiss lawsuits at very early stages. In addition, he has obtained summary judgment on behalf of employers in a multitude of cases.

Kylie Crawford TenBrook Biography

After graduating from University of Toledo, Kylie was admitted to the State Bar of Arizona in 2006. She has been practicing with the firm since February 2016.

Kylie is a Partner at Pierce Coleman PLLC. Kylie focuses her practice on handling a variety of matters in defense of employers and municipalities including in the areas of wage and hour, medical leave, harassment, discrimination, wrongful termination, and retaliation. Kylie has represented employers before various government agencies charged with investigating and prosecuting employment claims, such as the EEOC, U.S. Department of Labor, the Arizona Industrial Commission, the Arizona Department of Economic Security, and the Civil Rights Division of the Arizona Attorney General's Office, as well as in courts of various jurisdiction.

Kylie has particular experience in the hospitality industry. Prior to joining the firm, Kylie served as in-house counsel for an international hotel chain. In that role, Kylie advised the corporation and associated hotels on a variety of employment-related issues, throughout the United States and internationally, including wage and hour, overtime, discrimination, medical and veteran leave, performance management, and separation issues. Kylie also oversaw all aspects of litigation for the corporation, including in employment, personal injury, breach of contract, bankruptcy, consumer deception, and trademark matters. Kylie's in-house experience has given her a unique understanding of the business considerations implicated in employment decisions and how those considerations must be weighed in making those decisions.

Before working in-house, Kylie exclusively practiced management-side labor and employment law in private practice with a national law firm.

Kylie has conducted many presentations for both Arizona and national audiences on a wide-ranging number of employment-related topics. Most recently, Kylie served as a presenter at the Hospitality Lawyer Conference and at the 2013-2015 Best Western International Annual Conventions. Kylie has contributed numerous articles to the Arizona Employment Law Letter over the last ten years.

Kylie graduated magna cum laude from Eastern Michigan University. She received her J.D., summa cum laude, from the University of Toledo, College of Law. After law school, Kylie clerked for the Honorable Joseph J. Farnan in the United States District Court for the District of Delaware.

In her spare time, Kylie works with the Florence Immigration and Refugee Rights Project, providing pro bono services to individuals seeking asylum in the United States on the basis of torture or political persecution. As a result of her work, Kylie was named 2014 Pro Bono Attorney of the Year by the Arizona Foundation for Legal Services and Education.

Aaron Arnson Biography

After graduating from Brigham Young University School of Law, Aaron was admitted to the State Bar of Arizona in 2014. He has been with the firm since February 2017.

Aaron Arnson is an Associate at Pierce Coleman PLLC. Aaron primarily advises and defends private employers, municipalities, and other public entities on an array of compliance issues in the areas of wage and hour, family and medical leave, harassment, discrimination, wrongful termination, and retaliation. He also works with clients to draft and revise employment agreements, restrictive covenants, employment handbooks, social media policies, and other materials.

Aaron has represented clients before various government agencies, including the EEOC, U.S. Department of Labor, the Arizona Department of Economic Security, and the Civil Rights Division of the Arizona Attorney General's Office, and before courts throughout Arizona. He frequently writes and presents on employment law issues, most recently at the Society for Human Resource Management's (SHRM) Law and Legislative Conference.

Aaron received his J.D., magna cum laude, from the J. Reuben Clark Law School at Brigham Young University. Aaron began his legal career clerking for the Honorable Ann A. Scott Timmer at the Arizona Supreme Court and practicing at one of the Southwest's most highly regarded law firms. While in law school, Aaron served as an Executive Editor of the BYU Law Review.

D. Legal Services To Be Provided in Role of Town Attorney

The role of the Town Attorney is to conduct the office consistent with the requirements of the Town Code. When acting as the legal counselor and advisor of the Council, it is important that the Town Attorney remember that he or she is the advisor to the Council as a whole, and not any individual council member. This can be difficult for some attorneys, however, we believe our experience in other cities has proven we understand and adhere to this tenet. Additionally, the Town Attorney's role requires hands on involvement in drafting or supervising the drafting of Town documents, and representation in legal proceedings.

E. Structure of Working Relationship in Role of Town Attorney

We would structure our working relationship similar to how we structure it in other cities. Specifically, as a result of our flat fee model, Department Heads and other members of staff are not as constrained by the billable hour to seek and receive legal advice directly from the Town Attorney. Therefore, we would set up an open system in which Department Heads can contact us directly on issues, which eliminates red tape. At times, however, the issues brought to our attention by Department Heads are such that higher-level management or Council needs to be involved. We maintain close contact with the Town Manager and Town Clerk in order to respond both to the needs of the Manager and Clerk, keep them apprised of the issues being brought to us by Department Heads, and also in order to keep them apprised of issues that may need discussion with Council. And ultimately, we maintain an open door/open phone policy when it comes to all members of Council.

F. Keeping Town Council & Town Manager Informed

When significant developments in the law have happened, or when there is a change in the status of litigation, we typically inform the Manager and Council of this through confidential attorney-client privileged e-mails to the body. We instruct Council not to "reply to all" so as not to have an open meeting law issue. If the case law development or litigation status requires more attention by the Council, we would request that an executive session be scheduled to discuss the issue.

G. Response Time to Inquiries

We pride ourselves on responsiveness. Absent extraordinary situations, we are able to provide same-day communication in response to inquiries from the Council and Manager, and most of the time our response time is within just hours.

H. Response Time to Public Records Requests

Typically, administrative staff will gather documents that are responsive to a public records request and we immediately begin review in order to turn around the documents as quickly as possible. Of course, if the request requires significant review, it could take a couple of days to have the documents ready for production. But we are typically immediately able to review documents for potential disclosure, and have done this many times.

I. Tracking and Management of Legal Costs

This has been one of the biggest drivers for the two cities we advise (Tolleson and El Mirage) to utilize our services. For those cities - and what we would propose to the Town of Fountain Hills - we have established a

yearly flat fee to handle the city/town attorney services. As a result, the municipality has certainty with regard to its budget and the flat fee incentivizes us to keep costs to a minimum. When on occasion we need to engage outside legal services, most of the time we are able to pay those lawyers out of the flat fee already paid to the firm, which further reduces cost to the Town. In order to ensure the flat fee is fair to all involved, we still keep track of our time as if we were billing by the hour so that a comparison can be made to make sure the flat fee is commensurate with what the actual fees would be if time were being billed by the hour. In the most recent budget passed by the City of El Mirage, the City was able to reduce its legal services budget by over \$100,000. The same is true in Tolleson. Because of the current size of our firm (4-5 lawyers), we are able to be flexible this way where other larger firms are not.

J. Proactive Advice to Town Council, Town Manager and Staff regarding Legal Developments

Similar to our answer to subparagraph (f), when issues of importance to the Town develop, we prefer to provide that information via e-mail because it is the quickest and most effective way to provide information to the Council and Manager. For those who prefer a different approach, we are happy to provide information in an alternative format. Nonetheless, because of our work for other municipalities, as well as our general engagement on all employment related matters for all members of the Arizona Municipal Risk Retention Pool, we are regularly updated from various sources on legal developments and issues of concern for municipalities and when we determine that those matters are important to the Town, whether asked or not, we provide that information in an easy to read format.

K. Coordination of Work with Town Manager and Town Department Heads

We would propose coordinating daily work the same way as we do it in Tolleson and El Mirage. Specifically, when attention is needed to a matter (e.g., review and development of a contract, ordinance, RFQ or other procurement matter), we like to have those matters sent to our attention via e-mail so that we can have all of the documents electronically in one place. After receiving the information we maintain regular communication with the Manager or Department Head leading the work in order to keep him or her updated on our progress, and then respond in e-mail so that the Manager and Department Heads can have written confirmation that we've performed the work necessary. We typically like to have these e-mails come to two of our lawyers in order to insure that the work is timely addressed in the event the primary attorney contact for the Town is unavailable.

L. Experience with Project Negotiation, Development Agreements, and Drafting & Implementation of Other Agreements and Contracts (i.e. lease, purchase) and Litigation

For one of the cities that we represent, we are currently in the process of negotiating a major development with a developer, which will include multiple retail establishments and housing. We've worked through issues pertaining to the viability of the Government Property Lease Excise Tax (GPLET), as well as a potential lease-purchase with regard to the property. We're currently working on a development agreement in that matter, and have assisted in the creation and adoption of development agreements for other projects. We've been involved in negotiating and drafting of documents associated with both the sale and purchase of municipal property, as well as condemnation proceedings. We've assisted in the development of leases of municipal property for retail establishments as well. Additionally, we have an extensive litigation practice, having successfully represented the members of the Arizona Municipal Risk Retention Pool (including the Town of Fountain Hills) in litigation primarily pertaining to employment and civil rights matters for approximately 15 years.

M. Evaluation Process for Staffing a Case, Providing Expert Advice or Providing Other Needed Services

The initial evaluation would center on whether there is insurance coverage for the claim. If there is, the AMRRP provides litigation counsel for such matters. For claims not covered by insurance, we are able to handle most matters internally, however, even when we need assistance outside of our firm, we are typically able to do so

under the flat fee arrangement such that it does not cost the Town any additional money. That determination is made based on the nature of the claim and level of expertise necessary to a particular area of the law.

N. Firm's Practices Regarding Professional Development Training

Not only do we regularly attend workshops and seminars on such issues, we are regularly asked to present on such topics. Our attorneys are regular presenters at the City Attorney's conference, the Public Practice Seminar, as well as events sponsored by the League of Arizona Cities and Towns and the Arizona Municipal Risk Retention Pool.

O. Systems & Mechanisms for Establishing Regular Reporting of Status of Projects, Requests, and Litigation

We believe that the manner in which we handle our daily tasks (explained above in subparagraph K) provides for a regular reporting of the status of projects, requests, and litigation.

P. Reports for Town Council and Town Manager

We have found that most Managers and Councils get so many reports that creating specific legal reports is often additional paperwork that isn't wanted or needed. As a result, our reporting is typically done as described above via e-mails and updates as developments happen. Of course, reports of work performed (the timekeeping system described above for keeping track of the time spent on tasks) are always available and could be provided monthly if desired.

Q. Legal Services on Code Compliance Issues

Although the Town Prosecutor and Code Compliance Officer generally work together on these issues, we have on occasion been asked to provide guidance and direction associated with code compliance (i.e., fire code, trash, etc.) and on changes to the code in those areas, and would be able to do so for the Town of Fountain Hills. We would expect the process to be the same as other legal services requests.

R. Suggested Processes for Transmittal of Requests and Other Material to Town Attorney

Please see answer to subparagraph E. and K. above.

S. Monthly Itemized Statements and Annual Audit

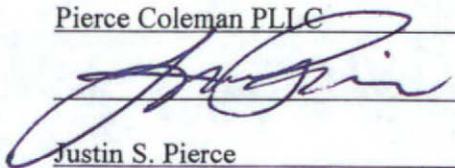
As noted above, even though we would propose negotiating a flat fee for the work, we still keep track of the time spent on such tasks and maintain such records on a monthly basis which we are happy to transmit to the Town to keep for audit purposes. We can do so in a number of formats (electronically or physical hard copies).

CERTIFICATION OF PROPOSAL FORM

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the Town in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the Town is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the Town reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the Town.
- The proposal includes all components, figures and data required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The Town is not responsible for any cost associated with preparing the Proposal.

Date: June 28, 2018

Name of Firm: Pierce Coleman PLLC

Authorized Signature: 

Print/Type Name: Justin S. Pierce

Title: Owning Member

Address: 4711 E. Falcon Drive, Suite 111, Mesa, AZ 85215

Telephone: 602-772-5506 (Main); 602-772-5508 (Direct)

Fax: 877-772-1025

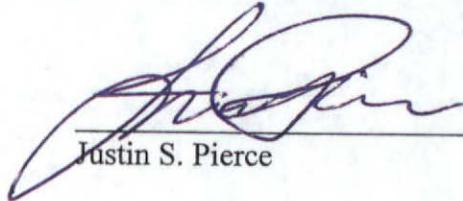
Email: Justin@PierceColeman.com

NON-COLLUSION AFFIDAVIT

State of Arizona)
)
County of Maricopa) ss.

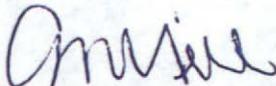
Justin S. Pierce, affiant, a Member in the law firm of Pierce Coleman, PLLC, the company who makes the accompanying Proposal, having first been duly sworn, deposes and says:

That such Proposal is genuine and not sham or collusive, nor made in the interest or behalf of any persons not herein named, and that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.


Justin S. Pierce

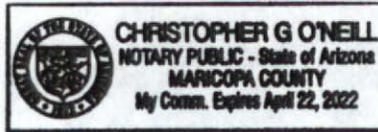
Member
Title

Subscribed and sworn to before me this 28th day of June, 2018.


Signature of Notary Public in and for the

State of Arizona

County of Maricopa



REFERENCES

City of Tolleson

Anna Tovar, Mayor
City of Tolleson
9555 W Van Buren St
Tolleson, AZ 85353
(623) 936-7111
Email: mayortovar@tollesonaz.org

City of Tolleson

Reyes E. Medrano, Jr., City Manager
City of Tolleson
9555 W Van Buren St
Tolleson, AZ 85353
(623) 936-7111
Email: rmedrano@tollesonaz.org

City of El Mirage

Lana Mook, Mayor
City of El Mirage
10000 N El Mirage Rd
El Mirage, AZ 85335
(623) 876-2924
Email: lmook@elmirageaz.gov

City of San Luis

Kay Macuil, City Attorney
City of San Luis
P.O. Box 1170
San Luis, AZ 85349
(928) 314-9117
Email: kmacuil@cityofsanluis.org

CONFLICTS OF INTEREST

To our knowledge, Pierce Coleman PLLC has no conflict of interest that would preclude its ability to enter into an agreement to provide legal services as outside counsel with the Town of Fountain Hills.

A. Identify any foreseeable or potential conflicts of interest and public clients you serve and the manner in which you would propose to resolve such conflicts.

No known foreseeable or potential conflicts of interest. If any conflict should arise, the firm ensures that it isolates any attorney with a potential conflict from viewing, accessing, or being involved in Town work.

B. For the person to be designated as Town Attorney and any substitute Town Attorney(s), list all public clients that person presently represents as Town Attorney or general counsel, along with the meeting dates and times for each governing body.

Justin Pierce is the primary contact attorney for the following Cities, and attends most of their meetings:

- City of Tolleson: 2nd and 4th Tuesdays of the month at 6pm.
- City of El Mirage: 1st and 3rd Tuesdays of the month at 6pm.

However, Aaron Arnson has attended meetings in Justin's place on occasion, and is the primary attorney "behind the scenes" who performs a significant amount of work on behalf of these cities. Kylie TenBrook is also involved in performing work on behalf of these cities. All three of these attorneys are well-positioned to be able to attend Council meetings and manage any conflicts in meeting times that may arise.

C. List all private clients that could potentially pose a conflict of interest with your representation of the Town of Fountain Hills.

We do not believe we have any such clients. Our practice is primarily representing governmental entities, mostly municipalities. We do not take on clients that we believe will have adverse interests to such governmental entities.

D. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.

Pierce Coleman PLLC has a policy never to take on representations adverse to public entities. We do not believe it is consistent to have a robust municipal practice defending municipal clients in a range of matters, while suing other public entities or even municipalities who may not currently be our clients.

Of course, because the firm defends municipalities against actions by the Industrial Commission, which is a Department of the State of Arizona, there are have been two cases the firm has been involved which were adverse to the State (notwithstanding the State itself has been a client of the firm as well):

State of AZ, ex rel., the Industrial Commission of AZ v. City of Winslow
Maricopa County Superior Court Case No. CV2015-009104
Case Filed: July 23, 2015; Case Resolution Date: March 3, 2017

State of AZ, ex rel., the Industrial Commission of AZ v. City of Winslow
Maricopa County Superior Court Case No. CV2015-011711
Case Filed: October 15, 2015; Case Resolution Date: February 14, 2017

E. Please list any political contributions of money, in-kind services, or loans made to any member of a Town Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the Town of Fountain Hills.

None.

TERMS OF ENGAGEMENT

This document sets forth the terms of engagement as Town Attorney. Unless modified in writing by mutual agreement, these terms are an integral part of the agreement.

RECITALS: The Town issued a Request for Proposals in May 2018 (the "RFP") for legal services. Pierce Coleman responded to the RFP. The RFP and Pierce Coleman's response to the RFP are incorporated herein by reference.

SCOPE: The Town of Fountain Hills, Arizona (the "Town") retains Pierce Coleman PLLC (the "Firm") as its contract Town Attorney to provide general legal services as typically provided by a Town Attorney and in accordance with the Town Code. This Agreement shall be effective September 19, 2018 through August 31, 2019.

The Firm will at all times act on behalf of the Town to the best of the Firm's ability. Any expressions on the part of Pierce Coleman concerning the outcome of Town legal matters are expressions of the Firm's best professional judgment, but are not guarantees. Such opinions are necessarily limited by the Firm's knowledge of the facts and are based on the state of the law at the time they are expressed.

Customarily, each client of the Firm is served by a primary attorney contact. The primary attorney should be someone in whom the Town has confidence and with whom the Town enjoys working. The Town can request a change of primary attorney at any time. Subject to the supervisory role of the primary attorney, the Town's work, or parts of it, may be performed by other lawyers and legal assistants in the Firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, the Firm will advise the Town of the names of those attorneys and legal assistants who work on Town matters.

The Firm will keep track of time and send monthly "shadow" invoices for time worked such that the Town and Pierce Coleman may compare the actual time to the flat fee amount. The Firm will keep track of time based on the following hourly rates: \$250/hr. for Partners; \$175/hr. for Associates; and \$75/hr. for Paralegals.

FLAT FEE: The Town retains Pierce Coleman PLLC on a flat fee basis. The flat fee shall be \$180,000. This amount shall be paid in monthly installments: \$15,000 per month, payable upon receipt of the invoice from Pierce Coleman PLLC.

COSTS AND EXPENSES: The Town agrees to pay for all actual out-of-pocket costs and expenses the Firm incurs on the Town's behalf. Typical costs and expenses include: filing fees, service of process, depositions, expert witness fees, travel costs and expenses, FedEx costs, courier services, and delivery charges, photocopying at \$.10 per page, and wire transfers.

The Firm may elect to cover other certain out-of-pocket costs and expenses on the Town's behalf, but reserves the right to seek reimbursement from the Town. The Town agrees to reimburse Pierce Coleman for such out-of-pocket costs and expenses. Pierce Coleman will not incur costs and expenses in excess of \$250 on the Town's behalf without first obtaining the Town's consent.

TERMINATION OF REPRESENTATION AND POST-REPRESENTATION MATTERS: The Town may terminate this representation at any time, subject to Pierce Coleman's obligations under the Rules of Professional Conduct adopted by the Arizona Supreme Court (Rule 42) and the approval of the court if a matter is in litigation.

REFUND: If the Town terminates the representation before Pierce Coleman has provided all legal services described in this agreement, the Town may be entitled to a refund of all or part of the flat fee based on the value of the legal services performed prior to termination.

DOCUMENT RETENTION: At the end of our representation, Pierce Coleman will retain the hard copy or electronic version of the Town's file, unless requested by the Town. If the Town does not want the file, the Town agrees that the file may be destroyed in accordance with Pierce Coleman's document retention policy. Currently, it is Firm policy to destroy files five years after the termination of a representation.

ARBITRATION OF FEE DISPUTES: If a dispute arises between the Town and Pierce Coleman regarding fees, the parties agree to resolve that dispute through the Arizona State Bar's Fee Arbitration Program. Either party may initiate fee arbitration by contacting the State Bar's Fee Arbitration Coordinator at 602.340.7379.

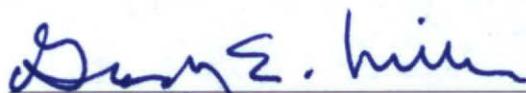
NO ADVICE REGARDING THIS FEE AGREEMENT: Pierce Coleman is not acting as the Town's counsel with respect to this Agreement. If the Town wishes to be advised on whether it should enter into this Agreement, Pierce Coleman recommends that you consult with independent counsel of your choice.

CANCELLATION: This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

ISRAEL: Pursuant to A.R.S. § 35-393, Pierce Coleman certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel.

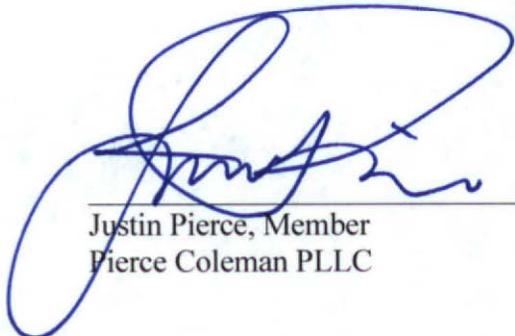
NO GUARANTEES HAVE BEEN MADE AS TO THE FINAL OUTCOME IN ANY TOWN LEGAL MATTERS.

DATED this ____ day of September 2018.



Grady E. Miller, Town Manager
Town of Fountain Hills, Arizona

DATED this 20th day of September 2018.



Justin Pierce, Member
Pierce Coleman PLLC



September 10, 2018

VIA ELECTRONIC MAIL

David Trimble
Administrative Services Director
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268
Email: dtrimble@fh.az.gov

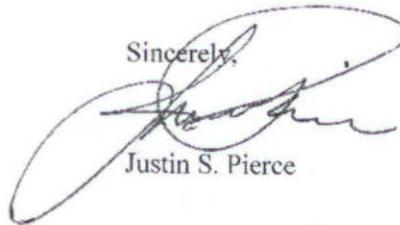
Re: RFP Town of Fountain Hills – Proposed Fee for Legal Services

Dear Mr. Trimble:

During our interview for the Town Attorney position on September 5, 2018, several members of the Council inquired about the arrangement proposed by Pierce Coleman (the "Firm") to provide contract attorney services using a flat fee model. In the Firm's Response to the Town's Request for Proposals, the Firm proposed a flat fee of \$225,000 annually. One of the Councilmembers asked about the possibility of reducing the proposed fee to \$180,000 annually. I responded that such an arrangement would likely be feasible.

It is my understanding that you subsequently spoke with my colleague, Aaron Arnson, on September 6, 2018, and informed him that the Council wishes to obtain written confirmation that the proposed reduced fee would in fact be acceptable to the Firm. This letter is to confirm that, upon being selected to serve in as the contract Town Attorney, a \$180,000 annual fee for the first year of services would be acceptable to the Firm. As stated in the Response to the Request for Proposals, this fee is subject to adjustment on an annual basis. Please do not hesitate to contact me if you require anything further.

Sincerely,



Justin S. Pierce

JSP/kmc

**PROPOSAL TO
TOWN OF FOUNTAIN HILLS
FOR TOWN ATTORNEY SERVICES**

Submitted: June 28, 2018

Submitted by:



PIERCE COLEMAN

**7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260**

**4711 E. Falcon Dr., Suite 111
Mesa, Arizona 85215**

**602-772-5506 / 877-772-1025 (Fax)
justin@piercecoleman.com**

COPY

Table of Contents

Letter of Transmittal	1
Firm Qualifications	2 – 7
Background and History.....	2
Location and Offices.....	2
Attorney Assigned to Represent Town and Who Will Attend Town Council Meetings Regularly.....	2-5
Legal Services to be Provided in Role as Town Attorney.....	5
Structure of Working Relationship in Role as Town Attorney.....	5
Keeping Town Council and Town Manager Informed.....	5
Response Time to Inquiries.....	5
Response Time to Public Records Requests.....	5
Tracking and Management of Legal Costs.....	5-6
Proactive Advice to Town Council, Town Manager and Staff regarding Legal Developments.....	6
Coordination of Work with Town Manager and Town Department Heads.....	6
Experience with Project Negotiation, Development Agreements, and Drafting & Implementation of Other Agreements and Contracts (i.e. lease, purchase) and Litigation.....	6
Evaluation Process for Staffing a Case, Providing Expert Advice or Providing Other Needed Services ...	6-7
Firm’s Practices Regarding Professional Development Training.....	7
Systems & Mechanisms for Establishing Regular Reporting of Status of Projects, Requests, and Litigation	7
Reports for Town Council and Town Manager.....	7
Legal Services on Code Compliance Issues.....	7
Suggested Processes for Transmittal of Requests and Other Material to Town Attorney.....	7
Monthly Itemized Statements and Annual Audit.....	7
Certification of Proposal Form	8
Business Information Form	9
Non-Collusion Affidavit	10
References	11
Conflicts of Interest	12
Insurance	13
Cost of Proposal	14 – 15
General Services.....	14
Special Services.....	14
Cost Containment.....	14
Billing Method.....	14
Reimbursable Expenses.....	14
Adjustments.....	15
Maximum Annual Expenditure Cap.....	15
Monthly Retainer/Billable Hours.....	15
Exhibits	16 – 24
Exhibit A – Attorney Justin S. Pierce Resume.....	16-17
Exhibit B – Sample Status Report.....	18-21
Exhibit C – Sample Billing Statement.....	22



7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260

4711 E. Falcon Drive, Suite 111
Mesa, Arizona 85215

JUSTIN S. PIERCE
Justin@PierceColeman.com

Tel 602 772 5506
Fax 877 772 1025

June 28, 2018

David Trimble
Administrative Services Director
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

Re: RFP Town of Fountain Hills – Town Attorney Services

Dear Mr. Trimble:

Pierce Coleman PLLC is pleased to submit this response to the Town's RFP for Town Attorney Services. Pierce Coleman PLLC is well positioned to provide the Town a positive commitment to perform the services within the proposed contract's specified time period.

Pierce Coleman PLLC is a professional limited liability company and is led by two members: Justin S. Pierce, Member, and Stephen B. Coleman, Member. The firm maintains two offices for better client service, one located in North Scottsdale and one located in Mesa.

The firm has significant experience representing public entities across the entire State of Arizona. For instance, the firm is the sole provider of employment law services to the Arizona Municipal Risk Retention Pool (AMRRP), which is an insurance pool comprised of over 70 municipalities in Arizona, and of which the Town of Fountain Hills is a member. The firm also represents the City of Tolleson and the City of El Mirage as those cities' contract City Attorney. Therefore, as discussed in more detail in the attached response, Pierce Coleman is uniquely qualified to assist the Town of Fountain Hills as its Town Attorney.

Again, Pierce Coleman PLLC appreciates the opportunity to submit this response to the Town's RFP for Town Attorney Services. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin S. Pierce", written over a large, stylized circular flourish.

Justin S. Pierce

JSP/kmc

FIRM QUALIFICATIONS

A. Background and History

Pierce Coleman PLLC was established in March 2015. The firm is structured as a professional limited liability company, and is led by two members: Justin Pierce and Steve Coleman. Kylie TenBrook is a Partner with the firm; Aaron D. Arnson is an Associate with the firm. The firm is also supported by an Office Administrator/Paralegal with over a decade of experience in the legal profession.

Combined, the attorneys have 47 years of experience in the private practice of law, primarily in the area of Labor and Employment. Justin, Steve, and Kylie have been listed in Southwest Super Lawyers®, Steve has been listed in Best Lawyers in America®, and the firm has been ranked by U.S. News – Best Lawyers® as one of its “Best Law Firms.”

Prior to establishing Pierce Coleman PLLC, Justin and Steve were Shareholders at one of the largest and most respected employment defense firms in the country, Jackson Lewis, P.C. Justin and Steve left to establish Pierce Coleman PLLC with the goal of delivering large firm lawyer expertise without the overhead associated with such a firm, thus exceeding clients’ expectations with effective representation at a more affordable price.

Justin, Steve, Kylie, and Aaron have spent much of their careers representing municipalities, and therefore are uniquely versed in the complexities and nuances of municipal law. They have many years of experience handling lawsuits involving alleged violations of the First Amendment, the Due Process Clause, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. The attorneys at Pierce Coleman have conducted internal investigations for numerous governmental clients, and have provided advice and counseling on compliance with employment statutes and regulations. Since 2017 the firm has also represented the Cities of Tolleson and El Mirage as those cities’ City Attorney.

Since the firm’s inception, Pierce Coleman has been the exclusive provider of employment law work for the Arizona Municipal Risk Retention Pool (AMRRP), which is an insurance pool comprised of over 70 municipalities in Arizona, as well as the League of Arizona Cities and Towns.

B. Location and Offices That Would Serve the Town of Fountain Hills

The firm maintains two offices for better client service, one located in North Scottsdale and one located in Mesa and would serve the Town of Fountain Hills from both offices. Our offices are at:

7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260

4711 E. Falcon Drive, Suite 111
Mesa, Arizona 85215

C. Attorney Assigned to Represent the Town of Fountain Hills and Who Will Attend Town Council Meetings Regularly

Below are biographies for the firm’s attorneys that discuss their qualifications. Justin Pierce will be the primary contact attorney (whose complete resume is attached as Exhibit A.), however, Aaron Arnson and Kylie TenBrook would also be involved significantly and may attend Council meetings on occasion.

Justin Pierce Biography

After graduating from Georgetown University, Justin was admitted to the State Bar of Arizona in 2003, and began his legal career as one of two law clerks to the Chief Justice of the Arizona Supreme Court. He has been with the firm since its inception in March 2015.

Justin represents private and public employers in wrongful termination, harassment, and discrimination claims before various government agencies charged with investigating and prosecuting employment claims, such as the Equal Employment Opportunity Commission, U.S. Department of Labor, and the Civil Rights Division of the Arizona Attorney General's Office, as well as in courts of various jurisdiction. He has litigated cases in the Arizona Superior Court, the Arizona Court of Appeals, and Arizona Supreme Court, as well as the U.S. District Court for the District of Arizona. He has also briefed and personally argued multiple cases at the Ninth Circuit Court of Appeals.

Justin has significant trial experience, having served as the lead trial attorney in dozens of cases before county, community college, and municipal personnel appeal boards, as well as private arbitrations, trials to the court, and as the lead trial attorney in a labor arbitration on behalf of a Fortune 500 company.

Justin has also represented multiple local boards of the Public Safety Personnel Retirement System and has counseled those boards regarding to their legal duties in granting or denying disability pensions to members of the system. Justin also represents the Maricopa County Employee and Law Enforcement Merit System Commission as the Commission's attorney.

Justin is the primary contact attorney for the cities of Tolleson and El Mirage, for whom the firm is the City Attorney.

Justin is a frequent speaker before business and employer associations, including the International Public Management Association (IPMA) – HR, and the Society for Human Resource Management (SHRM). He served on the faculty of the Defense Research Institute for its 2015 national conference for Governmental Tort and Civil Rights Liability.

Steve Coleman Biography

After graduating from Georgetown University, Steve was admitted to the State Bar of Arizona in 2002. He has been with the firm since its inception in March 2015.

Steve Coleman has represented management-side clients in employment matters for approximately 16 years. His practice focuses on all facets of employment law, with a primary emphasis on defending public employers in lawsuits involving alleged violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the First Amendment, the Due Process Clause, the Equal Protection Clause, the Fair Labor Standards Act, and state law discrimination and retaliation statutes.

His practice also encompasses representation of clients in proceedings before the Equal Employment Opportunity Commission, the Arizona Civil Rights Division, the Department of Labor Wage and Hour Division, and other administrative agencies.

Steve has served as lead counsel for governmental entities in dozens of employment law matters and has been involved in multiple jury trials, personnel appeal hearings, and other evidentiary proceedings. He has filed numerous successful motions to dismiss lawsuits at very early stages. In addition, he has obtained summary judgment on behalf of employers in a multitude of cases.

Kylie Crawford TenBrook Biography

After graduating from University of Toledo, Kylie was admitted to the State Bar of Arizona in 2006. She has been practicing with the firm since February 2016.

Kylie is a Partner at Pierce Coleman PLLC. Kylie focuses her practice on handling a variety of matters in defense of employers and municipalities including in the areas of wage and hour, medical leave, harassment, discrimination, wrongful termination, and retaliation. Kylie has represented employers before various government agencies charged with investigating and prosecuting employment claims, such as the EEOC, U.S. Department of Labor, the Arizona Industrial Commission, the Arizona Department of Economic Security, and the Civil Rights Division of the Arizona Attorney General's Office, as well as in courts of various jurisdiction.

Kylie has particular experience in the hospitality industry. Prior to joining the firm, Kylie served as in-house counsel for an international hotel chain. In that role, Kylie advised the corporation and associated hotels on a variety of employment-related issues, throughout the United States and internationally, including wage and hour, overtime, discrimination, medical and veteran leave, performance management, and separation issues. Kylie also oversaw all aspects of litigation for the corporation, including in employment, personal injury, breach of contract, bankruptcy, consumer deception, and trademark matters. Kylie's in-house experience has given her a unique understanding of the business considerations implicated in employment decisions and how those considerations must be weighed in making those decisions.

Before working in-house, Kylie exclusively practiced management-side labor and employment law in private practice with a national law firm.

Kylie has conducted many presentations for both Arizona and national audiences on a wide-ranging number of employment-related topics. Most recently, Kylie served as a presenter at the Hospitality Lawyer Conference and at the 2013-2015 Best Western International Annual Conventions. Kylie has contributed numerous articles to the Arizona Employment Law Letter over the last ten years.

Kylie graduated magna cum laude from Eastern Michigan University. She received her J.D., summa cum laude, from the University of Toledo, College of Law. After law school, Kylie clerked for the Honorable Joseph J. Farnan in the United States District Court for the District of Delaware.

In her spare time, Kylie works with the Florence Immigration and Refugee Rights Project, providing pro bono services to individuals seeking asylum in the United States on the basis of torture or political persecution. As a result of her work, Kylie was named 2014 Pro Bono Attorney of the Year by the Arizona Foundation for Legal Services and Education.

Aaron Arnson Biography

After graduating from Brigham Young University School of Law, Aaron was admitted to the State Bar of Arizona in 2014. He has been with the firm since February 2017.

Aaron Arnson is an Associate at Pierce Coleman PLLC. Aaron primarily advises and defends private employers, municipalities, and other public entities on an array of compliance issues in the areas of wage and hour, family and medical leave, harassment, discrimination, wrongful termination, and retaliation. He also works with clients to draft and revise employment agreements, restrictive covenants, employment handbooks, social media policies, and other materials.

Aaron has represented clients before various government agencies, including the EEOC, U.S. Department of Labor, the Arizona Department of Economic Security, and the Civil Rights Division of the Arizona Attorney General's Office, and before courts throughout Arizona. He frequently writes and presents on employment law issues, most recently at the Society for Human Resource Management's (SHRM) Law and Legislative Conference.

Aaron received his J.D., magna cum laude, from the J. Reuben Clark Law School at Brigham Young University. Aaron began his legal career clerking for the Honorable Ann A. Scott Timmer at the Arizona Supreme Court and practicing at one of the Southwest's most highly regarded law firms. While in law school, Aaron served as an Executive Editor of the BYU Law Review.

D. Legal Services To Be Provided in Role of Town Attorney

The role of the Town Attorney is to conduct the office consistent with the requirements of the Town Code. When acting as the legal counselor and advisor of the Council, it is important that the Town Attorney remember that he or she is the advisor to the Council as a whole, and not any individual council member. This can be difficult for some attorneys, however, we believe our experience in other cities has proven we understand and adhere to this tenet. Additionally, the Town Attorney's role requires hands on involvement in drafting or supervising the drafting of Town documents, and representation in legal proceedings.

E. Structure of Working Relationship in Role of Town Attorney

We would structure our working relationship similar to how we structure it in other cities. Specifically, as a result of our flat fee model, Department Heads and other members of staff are not as constrained by the billable hour to seek and receive legal advice directly from the Town Attorney. Therefore, we would set up an open system in which Department Heads can contact us directly on issues, which eliminates red tape. At times, however, the issues brought to our attention by Department Heads are such that higher-level management or Council needs to be involved. We maintain close contact with the Town Manager and Town Clerk in order to respond both to the needs of the Manager and Clerk, keep them apprised of the issues being brought to us by Department Heads, and also in order to keep them apprised of issues that may need discussion with Council. And ultimately, we maintain an open door/open phone policy when it comes to all members of Council.

F. Keeping Town Council & Town Manager Informed

When significant developments in the law have happened, or when there is a change in the status of litigation, we typically inform the Manager and Council of this through confidential attorney-client privileged e-mails to the body. We instruct Council not to "reply to all" so as not to have an open meeting law issue. If the case law development or litigation status requires more attention by the Council, we would request that an executive session be scheduled to discuss the issue.

G. Response Time to Inquiries

We pride ourselves on responsiveness. Absent extraordinary situations, we are able to provide same-day communication in response to inquiries from the Council and Manager, and most of the time our response time is within just hours.

H. Response Time to Public Records Requests

Typically, administrative staff will gather documents that are responsive to a public records request and we immediately begin review in order to turn around the documents as quickly as possible. Of course, if the request requires significant review, it could take a couple of days to have the documents ready for production. But we are typically immediately able to review documents for potential disclosure, and have done this many times.

I. Tracking and Management of Legal Costs

This has been one of the biggest drivers for the two cities we advise (Tolleson and El Mirage) to utilize our services. For those cities - and what we would propose to the Town of Fountain Hills - we have established a

yearly flat fee to handle the city/town attorney services. As a result, the municipality has certainty with regard to its budget and the flat fee incentivizes us to keep costs to a minimum. When on occasion we need to engage outside legal services, most of the time we are able to pay those lawyers out of the flat fee already paid to the firm, which further reduces cost to the Town. In order to ensure the flat fee is fair to all involved, we still keep track of our time as if we were billing by the hour so that a comparison can be made to make sure the flat fee is commensurate with what the actual fees would be if time were being billed by the hour. In the most recent budget passed by the City of El Mirage, the City was able to reduce its legal services budget by over \$100,000. The same is true in Tolleson. Because of the current size of our firm (4-5 lawyers), we are able to be flexible this way where other larger firms are not.

J. Proactive Advice to Town Council, Town Manager and Staff regarding Legal Developments

Similar to our answer to subparagraph (f), when issues of importance to the Town develop, we prefer to provide that information via e-mail because it is the quickest and most effective way to provide information to the Council and Manager. For those who prefer a different approach, we are happy to provide information in an alternative format. Nonetheless, because of our work for other municipalities, as well as our general engagement on all employment related matters for all members of the Arizona Municipal Risk Retention Pool, we are regularly updated from various sources on legal developments and issues of concern for municipalities and when we determine that those matters are important to the Town, whether asked or not, we provide that information in an easy to read format.

K. Coordination of Work with Town Manager and Town Department Heads

We would propose coordinating daily work the same way as we do it in Tolleson and El Mirage. Specifically, when attention is needed to a matter (e.g., review and development of a contract, ordinance, RFQ or other procurement matter), we like to have those matters sent to our attention via e-mail so that we can have all of the documents electronically in one place. After receiving the information we maintain regular communication with the Manager or Department Head leading the work in order to keep him or her updated on our progress, and then respond in e-mail so that the Manager and Department Heads can have written confirmation that we've performed the work necessary. We typically like to have these e-mails come to two of our lawyers in order to insure that the work is timely addressed in the event the primary attorney contact for the Town is unavailable.

L. Experience with Project Negotiation, Development Agreements, and Drafting & Implementation of Other Agreements and Contracts (i.e. lease, purchase) and Litigation

For one of the cities that we represent, we are currently in the process of negotiating a major development with a developer, which will include multiple retail establishments and housing. We've worked through issues pertaining to the viability of the Government Property Lease Excise Tax (GPLET), as well as a potential lease-purchase with regard to the property. We're currently working on a development agreement in that matter, and have assisted in the creation and adoption of development agreements for other projects. We've been involved in negotiating and drafting of documents associated with both the sale and purchase of municipal property, as well as condemnation proceedings. We've assisted in the development of leases of municipal property for retail establishments as well. Additionally, we have an extensive litigation practice, having successfully represented the members of the Arizona Municipal Risk Retention Pool (including the Town of Fountain Hills) in litigation primarily pertaining to employment and civil rights matters for approximately 15 years.

M. Evaluation Process for Staffing a Case, Providing Expert Advice or Providing Other Needed Services

The initial evaluation would center on whether there is insurance coverage for the claim. If there is, the AMRRP provides litigation counsel for such matters. For claims not covered by insurance, we are able to handle most matters internally, however, even when we need assistance outside of our firm, we are typically able to do so

under the flat fee arrangement such that it does not cost the Town any additional money. That determination is made based on the nature of the claim and level of expertise necessary to a particular area of the law.

N. Firm's Practices Regarding Professional Development Training

Not only do we regularly attend workshops and seminars on such issues, we are regularly asked to present on such topics. Our attorneys are regular presenters at the City Attorney's conference, the Public Practice Seminar, as well as events sponsored by the League of Arizona Cities and Towns and the Arizona Municipal Risk Retention Pool.

O. Systems & Mechanisms for Establishing Regular Reporting of Status of Projects, Requests, and Litigation

We believe that the manner in which we handle our daily tasks (explained above in subparagraph K) provides for a regular reporting of the status of projects, requests, and litigation.

P. Reports for Town Council and Town Manager

We have found that most Managers and Councils get so many reports that creating specific legal reports is often additional paperwork that isn't wanted or needed. As a result, our reporting is typically done as described above via e-mails and updates as developments happen. Of course, reports of work performed (the timekeeping system described above for keeping track of the time spent on tasks) are always available and could be provided monthly if desired.

Q. Legal Services on Code Compliance Issues

Although the Town Prosecutor and Code Compliance Officer generally work together on these issues, we have on occasion been asked to provide guidance and direction associated with code compliance (i.e., fire code, trash, etc.) and on changes to the code in those areas, and would be able to do so for the Town of Fountain Hills. We would expect the process to be the same as other legal services requests.

R. Suggested Processes for Transmittal of Requests and Other Material to Town Attorney

Please see answer to subparagraph E. and K. above.

S. Monthly Itemized Statements and Annual Audit

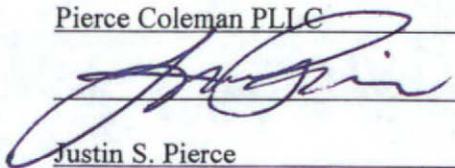
As noted above, even though we would propose negotiating a flat fee for the work, we still keep track of the time spent on such tasks and maintain such records on a monthly basis which we are happy to transmit to the Town to keep for audit purposes. We can do so in a number of formats (electronically or physical hard copies).

CERTIFICATION OF PROPOSAL FORM

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the Town in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the Town is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the Town reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the Town.
- The proposal includes all components, figures and data required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The Town is not responsible for any cost associated with preparing the Proposal.

Date: June 28, 2018

Name of Firm: Pierce Coleman PLLC

Authorized Signature: 

Print/Type Name: Justin S. Pierce

Title: Owning Member

Address: 4711 E. Falcon Drive, Suite 111, Mesa, AZ 85215

Telephone: 602-772-5506 (Main); 602-772-5508 (Direct)

Fax: 877-772-1025

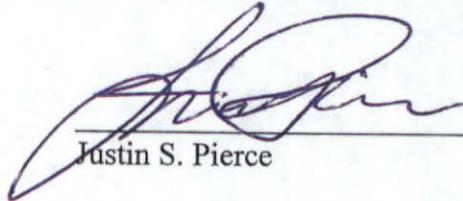
Email: Justin@PierceColeman.com

NON-COLLUSION AFFIDAVIT

State of Arizona)
)
County of Maricopa) ss.

Justin S. Pierce, affiant, a Member in the law firm of Pierce Coleman, PLLC, the company who makes the accompanying Proposal, having first been duly sworn, deposes and says:

That such Proposal is genuine and not sham or collusive, nor made in the interest or behalf of any persons not herein named, and that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.


Justin S. Pierce

Member
Title

Subscribed and sworn to before me this 28th day of June, 2018.


Signature of Notary Public in and for the

State of Arizona

County of Maricopa



REFERENCES

City of Tolleson

Anna Tovar, Mayor
City of Tolleson
9555 W Van Buren St
Tolleson, AZ 85353
(623) 936-7111
Email: mayortovar@tollesonaz.org

City of Tolleson

Reyes E. Medrano, Jr., City Manager
City of Tolleson
9555 W Van Buren St
Tolleson, AZ 85353
(623) 936-7111
Email: rmedrano@tollesonaz.org

City of El Mirage

Lana Mook, Mayor
City of El Mirage
10000 N El Mirage Rd
El Mirage, AZ 85335
(623) 876-2924
Email: lmook@elmirageaz.gov

City of San Luis

Kay Macuil, City Attorney
City of San Luis
P.O. Box 1170
San Luis, AZ 85349
(928) 314-9117
Email: kmacuil@cityofsanluis.org

CONFLICTS OF INTEREST

To our knowledge, Pierce Coleman PLLC has no conflict of interest that would preclude its ability to enter into an agreement to provide legal services as outside counsel with the Town of Fountain Hills.

A. Identify any foreseeable or potential conflicts of interest and public clients you serve and the manner in which you would propose to resolve such conflicts.

No known foreseeable or potential conflicts of interest. If any conflict should arise, the firm ensures that it isolates any attorney with a potential conflict from viewing, accessing, or being involved in Town work.

B. For the person to be designated as Town Attorney and any substitute Town Attorney(s), list all public clients that person presently represents as Town Attorney or general counsel, along with the meeting dates and times for each governing body.

Justin Pierce is the primary contact attorney for the following Cities, and attends most of their meetings:

- City of Tolleson: 2nd and 4th Tuesdays of the month at 6pm.
- City of El Mirage: 1st and 3rd Tuesdays of the month at 6pm.

However, Aaron Arnson has attended meetings in Justin's place on occasion, and is the primary attorney "behind the scenes" who performs a significant amount of work on behalf of these cities. Kylie TenBrook is also involved in performing work on behalf of these cities. All three of these attorneys are well-positioned to be able to attend Council meetings and manage any conflicts in meeting times that may arise.

C. List all private clients that could potentially pose a conflict of interest with your representation of the Town of Fountain Hills.

We do not believe we have any such clients. Our practice is primarily representing governmental entities, mostly municipalities. We do not take on clients that we believe will have adverse interests to such governmental entities.

D. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.

Pierce Coleman PLLC has a policy never to take on representations adverse to public entities. We do not believe it is consistent to have a robust municipal practice defending municipal clients in a range of matters, while suing other public entities or even municipalities who may not currently be our clients.

Of course, because the firm defends municipalities against actions by the Industrial Commission, which is a Department of the State of Arizona, there are have been two cases the firm has been involved which were adverse to the State (notwithstanding the State itself has been a client of the firm as well):

State of AZ, ex rel., the Industrial Commission of AZ v. City of Winslow
Maricopa County Superior Court Case No. CV2015-009104
Case Filed: July 23, 2015; Case Resolution Date: March 3, 2017

State of AZ, ex rel., the Industrial Commission of AZ v. City of Winslow
Maricopa County Superior Court Case No. CV2015-011711
Case Filed: October 15, 2015; Case Resolution Date: February 14, 2017

E. Please list any political contributions of money, in-kind services, or loans made to any member of a Town Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the Town of Fountain Hills.

None.

INSURANCE

Pierce Coleman PLLC carries both general liability and malpractice insurance coverage consistent with the requirements set forth in the Town of Fountain Hills RFP Section i. Insurance Requirements. A certificate of liability listing the Town as an endorsee is below and will be provided upon contract award.

CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 6/27/2018						
<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>								
PRODUCER: Insurance Professionals of Arizona 3521 E Brown Rd, Ste 101 Mesa AZ 85213	CONTACT: Michelle Jaramilla PHONE (AG, Ins, Est): 4809816338 FAX (AG, Est): 4809816339 EMAIL: michelle@insurancepe.com INSURER(S) AFFORDING COVERAGE NAIC #							
INSURED: PIERCE COLEMAN PLLC 7730 E. Greenway Rd., Suite 105 Scottsdale AZ 85260	INSURER A: Ohio Casualty Insurance INSURER B: NATIONAL FIRE INS CO OF HARTFORD INSURER C: Maxum Indemnity Company INSURER D: INSURER E: INSURER F:							
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:								
<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>								
LINE	TYPE OF INSURANCE	INSURER	INSD	WVD	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YYYY)	EXPIRY DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Business interruption included <input checked="" type="checkbox"/> BPP: \$30,000 GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		Y	Y	RZS58308842	03/25/2018	03/25/2019	EACH OCCURRENCE \$ 200000 DEDUCTIBLE TO SERVICE PREMIUMS (No occurrence) \$ 30000 MED-EMP (Any and person) \$ 1000 PERSONAL & ADV INJURY \$ 200000 GENERAL AGGREGATE \$ 400000 PRODUCTS - COMP/OP AGG \$ 400000 HANA \$ 100000 COVERED BRICK LBY (No accident) \$ 200000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		Y	Y	RZS58308842	03/25/2018	03/25/2019	COVERED BRICK LBY (No accident) \$ 200000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LMB <input type="checkbox"/> BEG <input type="checkbox"/> RETENTION \$							EACH OCCURRENCE \$ AGGREGATE \$ \$
B	EMPLOYERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A	6019961099	05/07/2018	05/07/2019	<input checked="" type="checkbox"/> PER-STATUTE <input type="checkbox"/> EMP-ER E.L. EACH ACCIDENT \$ 100000 E.L. DISEASE - EA EMPLOYEE \$ 100000 E.L. DISEASE - POLICY LIMIT \$ 100000
C	Professional Liability				PFP-6030867-01	04/02/2018	04/02/2019	each claim 200000 aggregate 200000 deductible 10000
<p>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if space is required) Town of Fountain Hills and its elected and appointed board, officers, agents, and employees are additional insureds with respect to this subject project and contract with Town. Retail policy shall not terminate, nor shall it be cancelled, until at least thirty (30) days after written notice is given to Town. The policy provides primary coverage to Town and its elected and appointed board, officers, agents, and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by Town.</p>								
CERTIFICATE HOLDER					CANCELLATION			
Town of Fountain Hills 16705 E. Avenue of the Fountains Fountain Hills, AZ 85268					SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Michelle Jaramilla			

COST OF PROPOSAL

- 1. General Services: Please give your definition of "general" legal services. Would all general legal services be included in your monthly retainer? Please list those general services that will and will not be included in the monthly retainer.**

We believe general services includes all legal matters the Town requires that are not otherwise covered by insurance. In our experience with other municipalities, the vast majority of (if not all) legal services are covered by our flat fee.

- 2. Special Services: Please give your definition of "special" legal services. How are they differentiated from general legal services? Would any special services be included in your retainer? If so, please identify them.**

Typically, special legal services are those that are for the benefit of a specific enterprise fund that requires specialized legal knowledge and skill (e.g., issues involving water and wastewater). These would be the only special legal services that would not be part of our flat fee, however, we expect this would be a very rare situation, especially in light of the Town's arrangement with things like water and wastewater.

- 3. How would your firm aid the Town in containment of its cost for Town Attorney legal services?**

As noted, the firm's flat fee arrangement with other municipalities (as well as the AMRRP itself) has yielded significant savings to those municipalities because they have had a certainty of budget and that budget has generally been less than what those municipalities were previously paying on a "pay as you go" basis. We expect this would be the same for the Town of Fountain Hills.

- 4. Billing Method: Describe your firm's preference for method of payment, payment terms, and your procedure for billing retention, hours, and expenses and other accounting requirements.**

Because of the size of our firm, we are able to be very flexible with regard to method of payment in order to reach an arrangement most efficient and advantageous to the Town. The firm's other municipal clients, who pay an annual flat fee for general legal services, pay the annual flat fee six months at a time, and we would propose the same arrangement with the Town of Fountain Hills.

- 5. Reimbursable: Define the type and unit rates for reimbursement of expenses. For example, rate for mileage, reproduction of documents or unit costs for telephone costs, etc.**

We do not bill for many costs at all. Instead, the firm sees such costs as a cost of doing business. Should we be required to conduct work out of town, or other extensive travel (in our experience, this is very unlikely), we request reimbursement for actual reasonable costs. If we are required to reproduce significant documents, we request reimbursement for copies at \$.10/page. We never request reimbursement for meals. We never bill for mileage within Maricopa County.

6. **Adjustments: Do you expect to have a cost-of-living adjustment incorporated into the agreement with the Town? If so, please explain how you propose it be computed and implemented. Do you expect the Town to provide access to law books? Do you expect that the Town will pay for travel expenses and/or professional development expenses?**

The firm does not expect a cost-of-living adjustment, access to law books, or pay for travel expenses and/or professional development expenses.

7. **Would your firm be willing to operate under a maximum annual expenditure cap with the Town? If so, please explain how it might be structured.**

Yes. As explained above, this is the very nature of the flat fee agreement that has been such a financial benefit to other cities. We would propose an annual amount, based on our experience in other cities and consistent with what we would expect the legal needs to be in the Town of Fountain Hills, and adjust that fee on an annual basis based on a review of the actual time spent vs. the flat fee. This method has worked well in other municipalities and again, has yielded significant savings to those municipalities.

8. **Monthly Retainer/Billable Hours: The proposed compensation shall be in two (2) formats. The Proposer shall propose a fixed rate under a monthly retainer fee for regular attendance at Town Council meetings, special Town Council meetings, communications with and on behalf of the Town of Fountain Hills, legal and support services provided to and on behalf of the Town. Provide a description of the proposed compensation schedule and what services would and would not be included in the monthly retainer. Please provide an hourly rate for each individual expected to work for the Town under this arrangement, as well as a rate for specified special legal services beyond the base monthly retainer. Include this information as Attachment C with your proposal.**

Pierce Coleman PLLC proposes a fixed rate annual flat fee. The flat fee proposed would be \$225,000, which is the same amount that the firm's other clients receiving City/Town Attorney general legal services have. All legal matters would be covered by this, unless there are special matters (noted above). The firm could do monthly installments, however, the firm's other clients under this fee arrangement pay this fixed rate annual flat fee in two installments.

Should the Town choose to retain the firm on an hourly rate basis, the rates for our attorneys are as follows:

Partners	Associates	Paralegals/Law Clerks
\$250	\$175	\$75

We bill our time in increments of one-tenth of an hour. We send invoices to our clients monthly. The billing will contain a brief summary of the nature of the work, the fees, and the costs advanced. For timeliness sake, we will do our best to send invoices for services rendered and expenses incurred no later than two or three weeks after the completion of the month in which the work is performed. Our billing software is compatible with electronic billing, so we can accommodate clients' preferences in this regard.

Exhibit A - ATTORNEY JUSTIN S. PIERCE RESUME

PROFESSIONAL EXPERIENCE

PIERCE COLEMAN PLLC

Founding Member

Phoenix, AZ

March 2015-Present

- Lead counsel for public and private employers in employment litigation before the federal and state courts and before administrative personnel appeal boards
- Provide advice, counseling, and training to employers on employment-related matters, review and prepare employment agreements, personnel handbooks, and separation/settlement agreements
- Legal adviser to various local boards of the Public Safety Personnel Retirement System, the City of Mesa Employee Merit Commission, and the Maricopa County Law Enforcement and Employee Merit System Commission
- Listed in Southwest Super Lawyers®
- Admitted to practice in all Arizona state and federal courts, as well as the United States Court of Appeals for the Ninth Circuit, the United States District Court for the District of Colorado and the United States District Court for the Western District of Michigan

JACKSON LEWIS P.C.

Of Counsel, Shareholder

Phoenix, AZ

January 2010-March 2015

- Represented employers in numerous lawsuits and administrative proceedings involving allegations of discrimination, harassment, and retaliation based on employment laws such as Title VII, the ADA, the ADEA, and the Arizona Employment Protection Act

FORD & HARRISON LLP

Associate

Phoenix, AZ

January 2007-January 2010

- Represented employers in all facets of labor and employment law, including counseling on compliance with employment laws and regulations, and defending employers in litigation involving allegations of discrimination, harassment and retaliation

LEWIS & ROCA LLP

Associate

Phoenix, AZ

Summer 2002, August 2004-December 2006

- Participated in all aspects of labor and employment litigation, and responded to administrative charges of discrimination

ARIZONA SUPREME COURT

Judicial Law Clerk to Chief Justice Charles E. Jones (retired)

Phoenix, AZ

August 2003-August 2004

- Performed legal research for members of the Supreme Court, provided recommendations on petitions for review, drafted bench memoranda of law with regard to cases for which review had been granted, assisted in drafting judicial opinions, and performed death penalty review

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER

Juris Doctor, Cum Laude

- Georgetown Domestic Violence Clinic
- Georgetown Journal of Law and Public Policy – Executive Editor

Washington, DC
May 2003

ARIZONA STATE UNIVERSITY

B.S., Accountancy

- Vice-President of Community Affairs, Accounting Student Association

Tempe, AZ
May 2000

COMMUNITY INVOLVEMENT

ARIZONA HOUSE OF REPRESENTATIVES

Mesa, AZ

- Chairman; Public Safety, Military, and Regulatory Affairs Committee
- Vice-Chairman; Judiciary Committee
- Vice-Chairman; Government Committee
- Vice-Chairman; Technology and Infrastructure Committee
- Member; Education Committee
- Member; Ad Hoc Committee on International Trade and Commerce

May 2011 to January 2015

YOUTH SPORTS

Mesa, AZ

- Youth Soccer, Basketball, and Flag Football Coach

2006 to Present

AMERICAN BAR ASSOCIATION, JUDICIAL INTERNSHIP OPPORTUNITY

Phoenix, AZ

- Mentor in the American Bar Association Judicial Intern Opportunity Program, which is a program that helps provide judicial internship opportunities for minority or financially disadvantaged law students

2008 to 2009

BOY SCOUTS OF AMERICA

Yuma & Mesa, AZ

- First as an Eagle Scout, then as a youth leader, adviser, and merit badge counselor

1992 to Present

LANGUAGES

English and Portuguese (fluent); Spanish (basic reading comprehension)

Exhibit B - Sample Status Report

ARIZONA MUNICIPAL RISK RETENTION POOL (AMRRP) ATTORNEY'S STATUS REPORT

TO: Jeremy Clark	POOL MEMBER: City of REDACTED
FROM: Steve Coleman	CASE NAME: Plaintiff v. City/Town of REDACTED
DATE: June 28, 2018 16, 2016	AMRRP NUMBER: GL XXXX
CASE #, VENUE, & JUDGE: Case No. CVXX-XXXX, Maricopa County Superior Court Judge REDACTED	

I. SUMMARY OF FACTS WHICH FORM BASIS OF PLAINTIFFS' CLAIMS

A. Factual overview

The Plaintiff is seeking relief on behalf of Former Employee ("Former Employee"). Former Employee was hired by the City of REDACTED (the "City") as a REDACTED in January REDACTED. This job was his/her full-time employment.

The City provides on-call firefighters the opportunity to respond to fires and other emergencies. The on-call firefighters receive an hourly wage for their service.

The City pays approximately \$800 per year for workers' compensation insurance for each on-call firefighter. The City expects on-call firefighters to maintain an acceptable response rate in order to justify the cost of continued employment. The Fire Chief periodically reviews the response rate for on-call firefighters and terminates those with inadequate participation rates.

In July REDACTED, REDACTED became the Chief of the REDACTED Fire Department. Over the years, Chief REDACTED began to have problems with Former Employee. For instance, Former Employee did not adequately fulfill his/her responsibilities as the firefighter in charge of training. In addition, Former Employee engaged in conduct that bordered on insubordination, such as disregarding the Chief's position of authority at the scene of a fire or other emergency.

On or about June 12, REDACTED, Former Employee met with the Town Manager, REDACTED, to discuss some concerns regarding workplace safety. Former Employee questioned the City's practice of placing the first firefighter to arrive at a scene in command of the operation. He/She also expressed a belief that it was inappropriate for the City to use a water tanker to fight vehicle fires on the highway.

In late July REDACTED, Chief REDACTED sought the Town Manager's approval to terminate Former Employee's employment. In the preceding months from January 13, REDACTED to July 23, REDACTED, Former Employee had worked only 25 hours. Former Employee's response rate was particularly poor for the period from May 19, REDACTED to July REDACTED, during which he was only available for two hours.

Chief REDACTED has stated that he/she was unaware of Former Employee's safety complaints at the time that he/she made recommendation to end the employment relationship. The City Manager agreed that termination was appropriate. Former Employee's employment with the City ended on July 24, REDACTED.

Thereafter, Former Employee filed a complaint with the REDACTED alleging that he/she was terminated in retaliation for filing a workers' compensation complaint and raising concerns about workplace safety.¹

¹ The PLAINTIFF is not pursuing the workers' compensation retaliation claim in the lawsuit.

II. PLAINTIFF

A. Name, age, marital status

Former Employee is 50 years old and is believed to be married. Former Employee is presently employed as an Emergency Medical Technician for REDACTED.

B. Effectiveness as a witness – rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness

Unknown. We will supplement this section after we have deposed Former Employee.

C. Name of plaintiff's attorney and ability

The PLAINTIFF is represented by REDACTED. She has been employed as an attorney for the REDACTED for approximately two years. Prior to that, she worked as assistant attorney in the REDACTED for eight years. We have no previous experience with REDACTED and therefore cannot provide any input regarding her abilities.

D. Judge and Venue

The case is pending in Maricopa County Superior Court and has been assigned to Judge REDACTED. The City has asked us to explore a possible motion to change the venue to REDACTED County Superior Court for the convenience of witnesses. If the case is not transferred, we expect it to be reassigned because Judge REDACTED recently rotated to the criminal division.

III. POOL MEMBER

A. Name

City of REDACTED

B. Contact and Title

REDACTED, City Attorney

C. PAL line used prior to claim?

We do not have a record of the PAL line being used.

D. Defense Witnesses.

1. REDACTED, City Manager
2. REDACTED, Fire Chief
3. REDACTED, Human Resources Manager.

IV. ANALYSIS OF CLAIM

A. Plaintiff's theories

The PLAINTIFF has asserted a single claim under the Arizona Occupational Safety and Health Act ("AOSHA"), alleging that the City terminated Former Employee in retaliation for raising concerns about workplace safety. To prevail, the PLAINTIFF has the burden of proving the following by a preponderance of evidence: (1) Former Employee engaged in protected activity; and (2) the "protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity." A.A.C. R20-5-681.

As discussed above, the City asserts that Former Employee was terminated based on his/her low response rate (which did not justify the expense of continuing his/her employment) and his/her borderline insubordination and failure to adequately perform training-related responsibilities. As a further defense, Chief REDACTED has indicated that he was unaware of the safety complaint prior to making the recommendation to terminated Former Employee's employment. In other words, the complaint could not have been a motivating factor for the Chief's actions.

The Division of Occupational Health and Safety (the "Division") conducted an administrative investigation of Former Employee's complaint that included interview of several City employees. On April 20, REDACTED, the Division finalized a "Discrimination Investigation Report" which concluded that there was no causal link between Former Employee's complaint and the termination decision. Accordingly, the Division recommended that the PLAINTIFF "should not pursue this complaint."

Notwithstanding the Division's recommendation, the PLAINTIFF voted three to two in favor of further pursuing the matter. In response, the Division amended the Discrimination Investigation Report on July 10, REDACTED to conclude that: "The preponderance of the evidence shows that more likely than not, the [City's] real reason for terminating Mr. Former Employee was Mr. Former Employee's protected activity." In other words, the Division completely reversed its original position.

In the amended report, the Division found that the City's explanation for the termination decision was not credible based on the following factors.

- The City allegedly provided inconsistent reasons for terminating Former Employee. The City's Human Resources Manager, REDACTED, sent a letter to the Division stating that Former Employee was discharged based on a low response rate, which did not justify the cost of continuing Former Employee's employment. However, Chief REDACTED stated in an investigative interview that Former Employee was terminated because of his borderline insubordination and poor attitude.
- During the period from January REDACTED to July REDACTED, Former Employee responded to more calls than ten other firefighters. Eight of the ten firefighters with lower response rates did not receive any discipline. Moreover, two firefighters responded to zero calls during the same time frame yet remained employed.
- Former Employee's termination letter was substantially different than the termination letters for ten other firefighters with low response rates. The other letters conveyed a message of understanding regarding shifting responsibilities (such as family, job, and other obligations) that may interfere with the ability of a firefighter to respond to calls. The letters also expressed gratitude for the terminated firefighter's interest in serving. In contrast, Former Employee's letter stated the following: "Your services are no longer required by the City of REDACTED Fire Department. Please turn in your turnout gear, radio/pager with charge, keys, ID card and any other department issued equipment immediately."
- The Fire Department did not follow a progressive discipline policy in connection with Former Employee's termination.
- The City gave Former Employee a pay raise approximately one month prior to his termination.
- Several employees of the Fire Department described an atmosphere of hostility to protected activity such as raising safety concerns.

The PLAINTIFF filed a lawsuit based on the revised recommendation.

B. Percentage probability of defense verdict

The Complaint has not yet been served in this matter, so we are in the preliminary stages of our analysis. We will supplement this section as the matter progresses.

C. Potential damages if case is lost

If Plaintiff prevails, the Court has authority to “order all appropriate relief including rehiring or reinstatement of the employee to his/her former position with back pay.” A.R.S. § 23-425. Former Employee was employed as an on-call firefighter, so his/her hours fluctuated based on the number of call-outs and his/her participation rate. According to the Human Resources Manager, on-call firefighters generally work between 2 and 20 hours per month. Former Employee was paid \$13.16/hour at the time of his/her termination.

It is unclear whether the phrase “all appropriate relief” includes emotional distress damages. We expect to learn more about Former Employee’s alleged damages after the Complaint is served and Plaintiff provides an initial disclosure statement.

D. Attorneys’ fees recoverable?

Attorneys’ fees are not recoverable under A.R.S. § 23-425.

E. Potential for success on dispositive motion

See above.

F. Settlement discussions

1. What is the demand?

We are not aware of any settlement demand.

2. What, if anything, have we offered? (If definite offer has not been made, but a range has been discussed, so state, listing each indicatory or range figure discussed).

We are not aware of any settlement offer by the City.

3. What do we believe the case can be settled for at this time?

Unknown, but we will be in a better position to evaluate this question after the Complaint is served and Plaintiff provides an initial disclosure statement.

4. Do you believe we should settle? Why?

The Complaint has not been served in this matter and we do not yet have sufficient information to evaluate whether settlement is appropriate.

Exhibit C - Sample Billing Statement/Invoice

Pierce Coleman PLLC
 7734 E. Greenway Road
 Suite 105
 Scottsdale, AZ 852604
 Phone: 602-772-5506



INVOICE 20001

ABC Corporation, Inc.
 1234 E. Main Street, Suite A
 Anywhere, US 67890

Date	May 04, 2015
Terms	Net 30
Service Thru	Apr 30, 2015

In Reference To: General Employment Advice (Billable)

Date	By	Services	Hours	Amount
04/20/2015	SBC	Telephone conference with client regarding complaint filed by former employee with administrative state agency	0.80	\$ 200.00
04/22/2015	SBC	Analyze documents relating to the termination of former employee and subsequent complaint.	0.40	\$ 100.00
04/23/2015	SBC	Work on responding to retaliation complaint.	0.30	\$ 75.00
04/23/2015	SBC	Review documents relating to termination of former employee and research and draft response to complaint.	1.10	\$ 275.00
04/27/2015	SBC	Review client documents and work on response to complaint filed by former employee.	1.90	\$ 475.00
04/28/2015	SBC	Review client documents and work on response to complaint filed by former employee.	2.70	\$ 675.00
04/29/2015	SBC	Review client documents and work on response to complaint filed by former employee.	1.10	\$ 275.00
04/30/2015	SBC	Work on revisions to response to complaint filed by former employee.	1.10	\$ 275.00
Total Hours			9.40 hrs	
Total Billable				\$ 2,350.00
Total Invoice Amount				\$ 2,350.00
Previous Balance				\$ 0.00
Balance (Amount Due)				\$ 2,350.00

User Hours Summary

Billing Period: 04/20/2015 - 04/30/2015

User Hour Totals

User	Hours Billed	Rate/Hour	Amount Billed
Stephen Coleman	9.40	\$250.00	\$2,350

**REQUEST FOR PROPOSALS BY
THE TOWN OF FOUNTAIN HILLS
FOR TOWN ATTORNEY
LEGAL SERVICES**

Date Issued: MAY 30, 2018

Proposals Due: JUNE 28, 2018 at 5:00 p.m.

**Submit To: David Trimble
Administrative Services Director
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268**

Town of Fountain Hills
Request for Proposals
for Town Attorney
Legal Services
Table of Contents

Title	Page
I. Introduction	3
A. Purpose	3
B. Background	3
C. Submittal Closing, Time, and Location	5
D. Inquiries	5
II. Terms and Conditions.....	6
A. Proposal Preparation Costs.....	6
B. Reservation of Right	6
C. Acceptance of Condition	6
D. Proposal Inclusion	7
E. Withdrawal of Proposal Before Closing.....	7
F. Proposal Submittal.....	7
G. Contract Execution	7
H. Professional Licensing.....	7
I. Insurance Requirement	7
J. Endorsements	8
K. Business Certificate	8
L. Public Record	8
M. Equal Opportunity	8
N. Independent Contractor	9
O. Conflict of Interest.....	9
P. Non-Collusion Affidavit.....	9
Q. Appendix	9
III. Scope of Work.....	9
A. Understanding the Scope of Work.....	9
B. Specifications	9
IV. Evaluation and Selection Criteria	11
A. Proposal Evaluation.....	11
B. Selection Process	12
C. Proposal Timeline.....	12
V. Requested Information	12
A. General Proposal	12
B. Cost of Proposal	15
VI. Sample Documents	
A. Copy of Typical Report Provided to Municipalities.....	16
B. Sample Billing Invoice	16
Attachments	
A. Certification of Proposal Form	17
B. Business Information Form	18
C. Affidavit of Non-Collusion Form.....	19

I. Introduction

a. Purpose

The Town of Fountain Hills invites interested legal firms and individuals to submit proposals for Town Attorney Services as described in the scope of work set forth in this request for proposals (RFP). The Town seeks a Town Attorney who will be responsive and provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the areas of general municipal law, land use, open meeting, contracts, procurement, and conflict of interest laws. The Town Attorney serves under the direction and supervision of the Town Council and acts as their legal advisor. The Town Attorney is not a Town employee and is not entitled to the benefits of a Town employee; the position is strictly on a contractual basis. The Town Council reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgment, to take charge of any litigation or legal matters or to assist the Town Attorney.

b. Background

The Town of Fountain Hills is located in Maricopa County, approximately 28 miles from Phoenix Sky Harbor Airport. The Town services an area of approximately 20 square miles with a population of just under 25,000. The Town's fiscal year begins on July 1 and ends on June 30.

The Town of Fountain Hills was incorporated in 1989 as a general law Town. The Town operates under a Council-Manager form of government. The Town is led by a seven-member Town Council, which is led by the Mayor and Vice-mayor. Article 3 of Town Code indicates that the Town Attorney shall be appointed by and serve at the pleasure of the Town Council. The Vice-mayor title shifts among Councilmembers every eight months to ensure equality among all Councilmembers. Councilmembers are elected to four year terms and the Mayor is elected to two-year terms. The Mayor and Council Elections are held in the Fall Election Cycle with the Primary held in August and the General held in November. The next Mayor and Council Primary Election will be held in August of 2018 with a run-off General Election held in November of 2018 (if applicable). The Council meets in the Town Hall Council Chambers the first and third Tuesdays of each month beginning at 5:30 p.m. and holds a work-study session the second Tuesday of the month beginning at 5:30 p.m., if a topic has been assigned.

The Town contracts for police services with Maricopa County and for fire services with Rural Metro; both have indemnified the Town within their individual contracts. The Town contracts with a law firm for prosecutorial services. This firm performs all duties of the Town Prosecutor's Office. The Town is a member of the Arizona Municipal Risk Retention Pool (AMRRP). AMRRP provides general liability and other insurance and risk management services including legal representation of the Town for liability claims. The Town has recently become a member of Employer's Council, a professional organization that provides legal services for personnel matters. These services include general personnel consulting, and legal representation before the Department of Labor, the Equal Employment Opportunity Commission, and other federal and state agencies.

Water and trash services are provided by private companies. Water is provided by Epcor and trash services are provided by Republic Services. A separate governmental entity, Fountain

Hills Sanitary District, provides for collection, treatment, and disposal of wastewater and its byproducts. Town services include parks and recreation, planning, building safety, and street maintenance services. Additional information about the Town can be found on the Town's website at www.fh.az.gov.

The Town Council is responsible for passing Town ordinances, resolutions, adopting an annual budget, appointing committees, and setting policy, among other things. The Town Council appoints the Town Manager. The Town Manager appoints the heads of the various departments and other Town Staff. The Town has approximately 43 full-time employees. The office hours of Town Hall are 7:00 a.m. to 6:00 p.m. Monday through Thursdays. Town Hall is closed on Fridays.

The adopted FY 2018-19 operating budget for the Town of Fountain Hills is \$38.9 million dollars, with total General Fund expenditures of \$17.8 million dollars.

c. Submittal Closing, Time, and Location

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. Any proposal found ineligible or incomplete shall not be considered for selection. Proposers assume full responsibility for having their proposal deposited at the proper address and no later than the scheduled closing time. Faxed or emailed proposals or modifications will not be considered.

Proposals will not be received after the closing date and time indicated below:

Proposal Labeling: REQUEST FOR PROPOSAL FOR TOWN ATTORNEY SERVICES

Submittal Closing: June 28, 2018 at 5:00 p.m.

PST Location: Town of Fountain Hills
Administrative Services
Attention: David Trimble
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Number of Copies: One (1) Original and seven (7) copies

d. Inquiries

Any prospective Proposer desiring an explanation or interpretation of the solicitation, specifications, etc. must request so in writing, no later than seven (7) days before proposal due date to allow a reply to reach prospective Proposer before the proposal submission date. The written request must be submitted to the individual identified below (emails permitted). Verbal explanations or instructions given during any phase of this solicitation will not be binding. Inquiries regarding this solicitation shall be directed to:

David Trimble
Administrative Services Director
Town of Fountain Hills

16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
Phone: (480) 816-5125
Email: dtrimble@fh.az.gov

Please reference "Request for Proposals for Town Attorney Services" when contacting the Town regarding this solicitation. The Town of Fountain Hills website, www.fh.az.gov will contain a copy of this document as well as a summary of any/all applicable addenda, if any.

II. Terms and Conditions

a. Proposal Preparation Costs

The Town is not, nor shall be deemed, liable for any costs incurred by Proposer in the preparation, submittal, or presentation of their proposals.

b. Reservation of Rights

This RFP does not commit or obligate the Town of Fountain Hills to accept or execute an agreement for any expressed or implied service. The Town reserves the right to:

- Reject any and all proposals received and to accept or reject any item(s) herein;
- Take all proposals under advisement for up to one hundred twenty (120) days after opening;
- Waive any informality on any proposal;
- Be the sole judge of the relative merits of the material mentioned in the respective proposal received;
- Request any firm/individual submitting a proposal to clarify its proposal during the selection phase;
- Negotiate the service schedule and reasonable costs with the selected firm/individual;
- Modify or alter any requirements herein, and issue addenda or amendments to this RFP;
- Terminate this RFP process at any time.

c. Acceptance of Conditions

It is the Proposer's responsibility to examine the scope and location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the Town based upon ignorance of the nature and requirements of the services provided, misapprehension of the work environment, or misunderstanding of the specification or agreement provisions.

By submitting a proposal, each Proposer expressly agrees to and accepts the following conditions:

- Proposal and cost schedules shall be valid and binding for one hundred twenty (120) days following the proposal due date and will become part of the Agreement that is negotiated with the Town.
- The Town may require whatever evidence is deemed necessary relative to the Proposer's financial stability and ability to perform these services.
- The Town reserves the right to request further information from the Proposer, either in writing or orally, to establish any stated qualifications.
- The Town reserves the right to solely judge the Proposer's representations, and to solely determine whether the Proposer is qualified to undertake these services pursuant to the criteria set forth herein. The Proposer, by submitting a proposal, expressly acknowledges and agrees that the judgment of the Town as to whether or not the Proposer is qualified to perform these services shall be binding, final and conclusive.

d. Proposal Inclusions

The Request for Proposals documents shall be submitted in their entirety, with ALL applicable portions fully completed by the Proposer. All Proposers are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting as outlined elsewhere in this document.

e. Withdrawal of Proposal Before Closing

Any Proposer may request the withdrawal of their submitted proposal by written request at any time prior to the scheduled closing date and time. Upon receiving written request to withdraw any proposal, the Town will consider the proposal null and void, and return the proposal to the Proposer. Withdrawal of proposal will not impact Proposer's resubmittal for this or any future proposal(s).

f. Proposal Submittal

All Proposers shall complete and return one (1) original and seven (7) copies of their proposal on standard 8½ x 11 inch paper size. Proposers shall limit their proposals to no more than twenty-five (25) pages, but may be less. Font size shall be eleven (11) point or larger. Page margins shall be at least ½ inch or more. More than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered.

g. Contract Execution

The firm/individual shall prepare the Agreement to be executed by both parties upon final review of the Town.

h. Professional Licensing

The professional services provider, and any sub-consultant(s), shall possess any necessary

professional certification(s) and/or license(s) relative to the work to be performed required by an appropriate licensing authority of the State of Arizona and shall provide evidence of such to the Town with their proposal or prior to commencement of the work in such a form as the Town shall require.

i. Insurance Requirement

The Proposer shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in, connection with the performance of the Agreement by the consultants, its agent, representatives, employees, or subcontractors. Proposer shall also require all of its subcontractors assigned to provide services to procure and maintain the same insurance requirement for the duration of the Agreement. Specific insurance requirements are as follows:

- General Liability Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate liability.
- Automobile Liability Insurance of at least \$1,000,000.00 per accident Combined Single Limit (CSL);
- Worker's Compensation Insurance of at least \$1,000,000.00 per claim;
- Professional Errors and Omissions Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate liability.

j. Endorsements

Endorsements shall be obtained so that each policy contains the following three provisions:

- (a) Additional Insured. (Not required for Professional Errors and Omissions Liability Insurance or Workers' Compensation.) "Town of Fountain Hills and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with Town."
- (b) Notice. "Said policy shall not terminate, nor shall it be cancelled, until at least thirty (30) days after written notice is given to Town."
- (c) Primary Coverage. The policy provides primary coverage to Town and its elected and appointed boards, officers, agents, and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by Town."

Insurance Certificates:

Firm shall provide to the Town, certificates of insurance showing the insurance coverages described in the paragraphs above, in a form and content approved by Town, prior to beginning work.

k. Business License

The professional provider, and any sub-consultant(s), shall obtain a valid Town of Fountain Hills Business License on or before their commencement of work.

l. Public Record

Be advised that all information contained in proposals submitted in response to this solicitation shall become a matter of public record upon contract award, and made available upon request, unless otherwise marked. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Proposer claims are exempt from disclosure pursuant to Arizona Public Records Laws.

m. Equal Opportunity

The Town of Fountain Hills requires all Proposers to comply with equal opportunity policies.

n. Independent Contractor

The Town Attorney will be an independent contractor. All persons employed by a firm in accordance with an Agreement resulting from this RFP will be employees of the firm or law practice and not of the Town of Fountain Hills.

o. Conflict of Interest

No official, officer, or employee of the Town of Fountain Hills or of a local public body during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. Furthermore, the parties hereto covenant and agree that to their knowledge, no board member, officer or employee of the Town of Fountain Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the Town of Fountain Hills, and that if any such interest comes to the knowledge of either party at any time, a full disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Title 38 of the *Arizona Revised Statutes* (A.R.S.) 38-501 through 38-511; or under rules in the *Arizona Administrative Code*.

p. Non-Collusion Affidavit

All proposals must be accompanied by a signed and notarized Non-Collusion Affidavit (see Attachment C).

q. Appendix

The appendix shall include any suggested additions or modifications to the scope that the individual/firm believes will enhance the quality of their proposal. Individual/Firm brochures, exhibits, and any other pertinent documents may be included in the Appendix.

III. Scope of Work

a. Understanding the Scope of Work

The Town Attorney is appointed by and reports to the Town Council. The Town Attorney is the chief legal counsel for the Town of Fountain Hills and, as such, is responsible for advising on all legal matters. The Town of Fountain Hills belongs to the Arizona Municipal Risk Retention Pool (AMRRP). The AMRRP represents the Town in general liability litigation. Additionally, the Town utilizes Employers Council for most personnel and labor law issues, however the Town Attorney advises on these matters as well.

b. Specifications

The Town Council seeks a Town Attorney who is service-oriented, actively involved in Town matters, creative in finding solutions and pro-active in assisting Town officials and staff. The primary responsibilities the Town will require of its Town Attorney shall include, but not be limited to, the following:

- Represent and provide legal advice and consultation on a daily basis to the Town Council, Town Manager and Town Staff as requested or required. Contacts are usually made by email or telephone and same-day response is typically expected.
- Maintain regular established office hours at Town Hall, including office hours at least two partial-days per week, including required attendance at the staff management meeting led by the Town Manager (currently every Wednesday morning lasting approximately one hour) except in the case of unavailability due to illness or vacation.
- Attend the two regular Town Council meetings per month (the first and third Tuesday of each month) and be prepared to review Town council agenda packets in advance of Town Council meetings, advise the Council and Town Manager on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Attendance at other Town meetings is required when requested. Executive sessions may be held both before and after the regularly scheduled Town Council meeting time of 5:30 p.m.
- Recommend policies and procedures that comply with the requirements of the law.
- Keep the Town Council informed of legislation or judicial opinions that have potential impact to the Town.
- Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports for the legal support of Town functions and duties. Review of routine items is generally expected to be completed within ten (10) business days of submittals. For more complex items, the Town Attorney is expected to provide regular reports to the Town Council, Town Manager or the designated staff person on the status of completion and anticipated completion dates.
- Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of leases, deeds and easements, agreements, utility franchise agreements, operations governed by law, liability situations, and other matters as necessary requiring legal advice.
- Provide support for the Town's Municipal Code compliance program. Support shall include, but not be limited to, establishing necessary procedures and policies for code compliance, enforcing land use regulations that affect Fountain Hills's quality of life, as well as addressing public nuisance violations negatively affecting neighborhoods.
- Interpret the Town's Municipal Code and assist in dealing with ordinance infractions as necessary.

- Prepare amendments to the Town's Municipal Code to ensure alignment with State and Federal law and to reflect Town Council direction.
- Provide guidance concerning the requirements of the Arizona Open Meetings Act, public records laws, conflict of interest laws, due process and other legal requirements imposed by statute and common law.
- Represent the Town in litigation not covered by the Town's membership in the Arizona Municipal Risk Retention Pool. Provide quarterly litigation reports to the Town, including issues being handled by special counsel.
- Provide legal advice and assistance to operating departments, including compliance with State and Town procurement statutes and codes.
- Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Town Council and management staff on legal matters pertaining to Town operations.
- Represent the Town before other governmental bodies and agencies to promote the interests of the Town.
- Oversee coordination with special legal counsel and/or the Arizona Municipal Risk Retention Pool on all Town litigation as directed by the Town Council and/or Town Manager.
- Maintain legal files and provide the Town Clerk copies of pertinent pleadings and orders in all litigation the Town Attorney is handling for the Town.
- Perform other legal duties or special projects as may be required by the Town Council as may be necessary to complete the performance and functions mentioned above.
- Procure, oversee and coordinate Bond Counsel as needed.
- Provide a detailed monthly invoice including job titles of staff performing work and hours worked by task.

IV. Evaluation and Selection Process

a. Proposal Evaluation

Selection of Proposer to interview with the Town will be based on the contents of their written proposal. Proposal will be rated according to the following criteria and the respective points assigned to each item (total of 200 possible points combined):

- (30 Points) Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;
- (30 Points) Understanding of municipal government issues and municipal law;
- (25 Points) Capability to perform legal services promptly and in a manner that permits the

Town Council and staff to meet established deadlines and operate in an effective and efficient manner;

- (25 Points) Qualifications of the key staff that will be assigned to the Town of Fountain Hills under this proposal;
- (25 Points) Familiarity with State of Arizona Land Use Law;
- (20 Points) Communication skills;
- (25 Points) References of past or current municipal law clients or municipal practice;
- (20 Points) Proposed fee structure, including but not necessarily limited to, a monthly retainer, services included in monthly retainer, hourly rates for services not included in monthly retainer.

During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarification from proposing firms/individuals to allow corrections of errors or omissions. The Town reserves the right to verify any information contained in proposals, including references, resumes, etc. The Town reserves the right to investigate and research proposals, including facts and opinions that could be helpful in evaluating the capabilities of firms/individuals whether or not they were specifically included in the proposals.

b. Selection Process

A panel of staff will review and recommend a short list of firms to be evaluated by a subcommittee of the Town Council. The subcommittee will then recommend a list of finalist firms to interview with the full Town Council. The interviews will allow the designated firms or individuals an opportunity to answer any questions the Town Council may have regarding their proposals. Participation in the interviews will be at no cost to the Town. The Town Council will make the final determination of the successful firm.

c. Proposal Timeline

Release of RFP- May 30, 2018

Deadline for Proposal Submission - June 28, 2018 at 5:00 p.m.

IV. Requested Information

All proposals must provide specific and succinct answers to all questions and requests for information. Indirect, imprecise, or incomplete responses can serve only to the disadvantage of the Proposer. Proposers shall limit their proposals to no more than twenty-five (25) pages, but may be less. Font size shall be eleven (11) point or larger. Page margins shall be at least ½ inch or more. More than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered. Please answer the questions in the format and order presented. Submissions of individual resumes alone will not be considered responsive to any specific question.

a. General Proposal

1. Letter of Transmittal: Signed by an authorized representative of the firm or the individual committing to provide the legal services described above, including a brief introduction and history of the firm, number of employees, proven work history, and a statement as to qualifications.
2. Table of Contents: Include a clear identification of the material by section and page number included in the proposal.
3. Firm Qualifications: Provide professional experience, including a list of all current and prior municipal clients the firm has represented, and qualifications for the Proposer and/or firm and the designated individuals to provide the services specified in the Request for Proposals. Please include responses to the following specific information:
 - a. Describe your firm's background and history; include number of years in business and number of years providing legal services to public sector agencies.
 - b. Location and office(s) that would serve the Town of Fountain Hills.
 - c. Provide the name(s) and qualifications of attorney(s) who would be assigned to represent the Town of Fountain Hills and who will attend Town Council meetings regularly, including the following for each:
 - Certificates or licenses, including the date of admission to the State Bar of Arizona;
 - Length of employment with the firm;
 - Description of education including name of educational institutions, degrees conferred, and year of each degree;
 - Professional background and professional associations;
 - Years of municipal or other local public-sector experience;
 - Knowledge of, and experience with Arizona Municipal Law relating to general law cities including, but not limited to, land use and planning, environmental law, general plans, public records, code enforcement and other related areas of law, administrative law, contracts, and other areas of municipal law;
 - Specific expertise and training;
 - Provide complete resumes of the persons designated by the firm to be the Town Attorney or substitute Town Attorney.
 - d. Describe your view of the role of the Town Attorney.
 - e. Describe how you would structure the working relationship between the Town Council, Town Manager, Town Clerk, Department Heads, and other members of

staff.

- f. Describe how you will keep the Town Council and the Town Manager informed about the status of litigation, significant case law and other legal matters.
 - g. Describe the response time we can expect from the Town Attorney to inquiries made by the Town Council and Town Manager.
 - h. Describe the response time we can expect from the Town Attorney to public records requests.
 - i. Describe how you will track and manage legal costs so that the Town's legal costs are held to a minimum. Please provide an example.
 - j. Describe how you will proactively advise the Town Council, Town Manager and staff about legal developments or issues of concern, without being asked.
 - k. Describe how as the Town Attorney you would coordinate your daily work with the Town Manager and Town Department Heads.
 - l. Clearly describe your range of experience with the project negotiation, development agreements, and the drafting and implementation of other agreements and contracts (i.e. lease, purchase) and litigation.
 - m. How would you evaluate whether to use an attorney within your law firm or an attorney from another law firm to handle a case, provide expert advice, or provide other needed services?
 - n. Describe the firms' practices regarding professional development training and keeping current with the laws and legal matters affecting its clients.
 - o. Describe systems/mechanisms that would be established for regular reporting of status of projects, requests, and litigation.
 - p. Identify the types of reports your firm would provide to the Town Council and Town Manager.
 - q. Describe how your firm would provide legal services related to code compliance issues.
 - r. Describe your firm's suggested process for transmittal of requests and other material to Town Attorney.
 - s. It is anticipated that the Town will contractually require monthly-itemized statements for all services and will subject these statements to audit at least annually. Describe how you would provide this reporting.
4. Please complete and submit the Certification of Proposal Form (Attachment A) and Business Information Form (Attachment B) with your Proposal.
 5. References: Provide contact information for three (3) municipal, public agency and/or key

clients for which legal services have been provided in the last ten (10) years. Please include the contact person's name, address, phone number and email address.

6. Clients/Potential Conflicts of Interest:

- a. Identify any foreseeable or potential conflicts of interest and public clients you serve and the manner in which you would propose to resolve such conflicts.
- b. For the person to be designated as Town Attorney and any substitute Town Attorney(s), list all public clients that person presently represents as Town Attorney or general counsel, along with the meeting dates and times for each governing body.
- c. List all private clients that could potentially pose a conflict of interest with your representation of the Town of Fountain Hills.
- d. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.
- e. Please list any political contributions of money, in-kind services, or loans made to any member of a Town Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the Town of Fountain Hills.

7. Insurance: Please include a description and pertinent information regarding the general liability and malpractice insurance carried by the firm or individual, including the amount of coverage provided by such insurance.

b. Cost of Proposal

It is anticipated that the Town will expect the selected firm to provide a system wherein "general" services are provided under a fixed monthly retainer and any additional "special" services are billed at a pre-negotiated hourly rate.

1. General Services: Please give your definition of "general" legal services. Would all general legal services be included in your monthly retainer? Please list those general services that will and will not be included in the monthly retainer.
2. Special Services: Please give your definition of "special" legal services. How are they differentiated from general legal services? Would any special services be included in your retainer? If so, please identify them.
3. How would your firm aid the Town in containment of its cost for Town Attorney legal services?
4. Billing Method: Describe your firm's preference for method of payment, payment terms, and your procedure for billing retention, hours, and expenses and other accounting requirements.
5. Reimbursable: Define the type and unit rates for reimbursement of expenses. For example, rate for mileage, reproduction of documents or unit costs for telephone costs,

etc.

6. Adjustments: Do you expect to have a cost-of-living adjustment incorporated into the agreement with the Town? If so, please explain how you propose it be computed and implemented. Do you expect the Town to provide access to law books? Do you expect that the Town will pay for travel expenses and/or professional development expenses?
7. Would your firm be willing to operate under a maximum annual expenditure cap with the Town? If so, please explain how it might be structured.
8. Monthly Retainer/Billable Hours: The proposed compensation shall be in two (2) formats. The Proposer shall propose a fixed rate under a monthly retainer fee for regular attendance at Town Council meetings, special Town Council meetings, communications with and on behalf of the Town of Fountain Hills, legal and support services provided to and on behalf of the Town. Provide a description of the proposed compensation schedule and what services would and would not be included in the monthly retainer. Please provide an hourly rate for each individual expected to work for the Town under this arrangement, as well as a rate for specified special legal services beyond the base monthly retainer. Include this information as Attachment C with your proposal.

V. Sample Documents

- a. Sample Report: Please submit a copy of a typical report your firm provides to municipalities (i.e. staff report, memorandum, legal opinion, etc.).
- b. Sample Billing Invoice: Please submit a copy of a typical invoice your firm provides to municipalities. Please redact any sensitive information.

Attachment A
Certification of Proposal

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the Town in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the Town is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the Town reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the Town.
- The proposal includes all components, figures and data required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The Town is not responsible for any cost associated with preparing the Proposal.

Date: _____

Name of Firm: _____

Authorized Signature: _____

Print/Type Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Attachment B
Business Information Form

Name of Firm: _____

Address: _____

Town/State/Zip Code: _____

Telephone: _____

Fax: _____

Email: _____

Website: _____

Federal Tax Number: _____

Number of Years in Business: _____

Number of Employees: _____

Does the firm/business maintain amounts of insurance specified by the Town? Yes No

Are there any claims that are pending against any insurance policies? Yes No

If yes, describe: _____

Has the firm/business been in bankruptcy, reorganization, or receivership in the last five years? Yes No

Has the proposed designated Town Attorney practiced municipal law a minimum of five (5) years? Yes No

Is each of the proposed attorneys accredited and in good standing with the State Bar of Arizona? Yes No

Business Classification: Corporation Partnership Individual

If a Corporation:

Date of Incorporation: _____

State of Incorporation: _____

President's Name: _____

If a Partnership:

Date of Organization: _____

Name of all Partners: _____

Attachment C

NON-COLLUSION AFFIDAVIT

Town of Fountain Hills Town Attorney Legal Services Request for Proposal

State of Arizona)) ss

County of)

(Affiant)

the _____
(Title)

of _____
(Contractor)

the persons, corporation, or company who makes the accompanying Proposal, having first been duly sworn, deposes and says:

That such Proposal is genuine and not sham or collusive, nor made in the interest or behalf of any person not herein named, and that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.

(Signature)

(Title)

Subscribed and sworn to before me this

_____ Day of _____, 20 ____

Signature of Notary Public in and for

the County of _____