

**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 of Fountain Hills (the “Town”) issued a Request for Proposals in May 2018 (the “RFP”) for legal services. Pierce Coleman PLLC (the “Firm”) responded to the RFP. The Firm was selected by the Town as its Town Attorney, and the RFP and the Firm’s response to the RFP were incorporated by reference into an Agreement dated September 19, 2018. The Town and the Firm now enter into this Agreement to continue the relationship.

**SCOPE:** The Town continues to retain 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 1, 2019 through June 30, 2020, and shall automatically renew on a yearly basis thereafter, in conjunction with the Town’s fiscal year, unless cancelled by the Town or the Firm upon 30 days’ notice, or in the event of a price change as noted under the “FLAT FEE” section below.

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.

**FLAT FEE:** The Town continues to retain Pierce Coleman PLLC on a flat fee basis under the terms outlined below.

- For the period running September 1, 2019 through June 30, 2020, the amount payable shall be \$195,500, payable in monthly installments of \$19,500.
- For the fiscal year commencing on July 1, 2020 and terminating on June 30, 2021, and for each fiscal year thereafter, the amount payable shall be \$234,000, payable in monthly installments of \$19,500. Prior to the end of each fiscal year, the Town and the Firm shall review prior years’ billings to determine whether the amount of the next year’s agreement shall increase, decrease, or remain unchanged. The contract shall renew automatically from year to year unless a price increase is required, in which case the price increase shall be submitted to and approved by the Town Council.

The Firm will keep track of time and send monthly “shadow” invoices for time worked such that the Town and the Firm may compare the actual time to the flat fee amount. The Firm will keep track of time

based on the following hourly rates: \$260/hr. for Partners; \$235/hr. for Of Counsel; \$190/hr. for Associates; \$125/hr. for Law Clerks; and \$90/hr. for Paralegals.

**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 the Firm for such out-of-pocket costs and expenses. The Firm 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 the Firm's obligations under the State Bar of Arizona's Rules of Professional Conduct and the approval of the court if a matter is in litigation.

**REFUND:** If the Town terminates the representation before the Firm 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, the Firm 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 the Firm'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 the Firm 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:** The Firm 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, the Firm recommends that the Town consult with independent counsel of its choice.

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

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

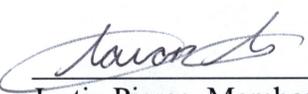
**NO GUARANTEES HAVE BEEN MADE AS TO THE FINAL OUTCOME IN ANY TOWN LEGAL MATTERS.**

[SIGNATURES APPEAR ON FOLLOWING PAGE]

DATED this 3<sup>rd</sup> day of ~~August~~ <sup>Sept</sup> 2019.

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

DATED this 3<sup>rd</sup> day of ~~August~~ <sup>September</sup> 2019.

 for  
\_\_\_\_\_  
Justin Pierce, Member  
Pierce Coleman PLLC

4813-6238-8892, v. 1