City of Benson
City Council Communication

Special Meeting **September 30, 2013**

To: Mayor and Council Agenda Item # 4

From: Jim Cox, Interim City Manager

Subject:

Review and possible action regarding approval of Municipal Legal Services Contract for the City Attorney

Discussion:

This item is at the request of Councilmember Wangsness.

Mr. Bill Sims of Sims Murray, Ltd. provides City Attorney services for several Arizona cities, including Safford, Globe, Tuscayan, Camp Verde and Jerome.

Emails from representatives of some of those cities and a specimen contract are attached.

As of this writing, I have traded several calls with Mr. Sims regarding his potential interest in providing City Attorney services to the City. I will inform Council as soon as we make contact.

Staff Recommendation:

Council pleasure

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT FOR LEGAL SERVICES ("**Agreement**") is made and entered into this 1st day of June, 2012 by and between_____, a municipal corporation ("**Town**") and SIMS MURRAY, LTD., an Arizona professional corporation ("**Sims Murray**") for services as Town Attorney.

RECITALS:

A. The Town desires to contract for the provision of legal services by counsel not in its employ.

B. Sims Murray has represented that it is professionally qualified to perform such services, and the Town has relied on such representation in entering into this Agreement.

NOW, THEREFORE, it is agreed between the parties as follows:

AGREEMENT:

1. Scope of Service and Representation. Sims Murray agrees to act as general legal counsel for the Town providing civil, transactional services including but not limited to:

a. Drafting ordinances and resolutions; drafting and negotiating contracts and leases; reviewing agendas and minutes; attending meetings of the Town Council and other boards and commissions as needed; coordinate with Town staff for review of documents prepared in-house; providing general legal advice and counsel in areas such as election law, property law, planning and zoning, code enforcement, contract law, procurement law and contracts, personnel, improvement districts, open meeting law, litigation, grants, insurance, state and federal law and municipal law; and overseeing the Town Prosecutor.

b. Attendance at most regular meetings of the Town Council and such other meetings as requested or required, including special meetings of the Council and meetings of the Planning and Zoning Commission.

c. Service as parliamentarian for the Town Council.

2. Advice and Status Reporting. Sims Murray shall provide Town with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as Sims Murray considers appropriate.

3. Compensation and Payment. Town agrees to pay Sims Murray for services rendered hereunder as provided in **Appendix A**. All services not specified in **Appendix A** shall be billed at actual cost. Fees and expenses shall be billed on a monthly basis and paid by Town within forty-five (45) days.

a. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation of the Town.

b. All consultants, experts and subcontractors engaged to provide services to Sims Murray in the performance of this Agreement, and the use and extent of those services, shall be approved by the Town prior to them providing the services.

c. Billing rate increases may only be requested by Sims Murray thirty (30) days prior to the annual anniversary date of this Agreement. Any increased rate shall be based on mutual consent of the Town and Sims Murray.

4. Reimbursement for Expenses. The cost of photocopies necessary in the ordinary course of business, faxes sent and received, long distance telephone charges, postage and WestLaw electronic legal research will not be billed to the Town. Large photocopying jobs contracted to an offsite vendor, courier services, and Federal Express will be billed at the actual cost incurred for those services. All costs and other disbursements for outside services not specified herein shall be billed at actual cost.

5. Term. The term of this Agreement shall be for the period _____, 20__ through _____, 20__, with options to extend for successive periods by mutual agreement of the parties. Approximately sixty (60) days before the termination date of this Agreement, the parties will meet to discuss a proposed renewal of this Agreement and the factors related to such a renewal. If the parties cannot agree on terms for the renewal period at least thirty (30) days before the termination date, the contract will expire as scheduled.

6. Cancellation. The Town reserves the right to cancel the whole or any part of this Agreement without cause. The Town will issue a written thirty (30) day notice of such cancellation.

7. Indemnification For and Liability and Professional Liability. To the fullest extent permitted by law, Sims Murray, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the Town, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorneys' fees, courts costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or in part by Sims Murray relating to work or services in the performance of this Agreement, including but not limited to anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Sims Murray's and subcontractor's employees.

8. Choice of Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

9. Whole Agreement. This Agreement constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify its terms.

10. Amendments. Any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of all parties signing the original Agreement.

11. Non-Assignment. Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the Town.

12. Cancellation. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

13. Independent Contractor Status. The services Sims Murray provides to Town under this Agreement are those of an independent contractor, not an employee.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

[TOWN]

By: _____

ATTEST:

_____
Town Clerk

SIMS MURRAY, LTD.

_____
William J. Sims III, Partner

APPENDIX A

Billing Rate Schedule

Fixed hourly rate for William J. Sims	$___/hour
Fixed hourly rate for Jeffrey T. Murray	$___/hour
Fixed hourly rate for Associate	$___/hour
Fixed hourly rate for Paralegal	$___/hour

Sims Murray will not charge the Town for faxes, long distance telephone charges, postage, photocopies, or WestLaw electronic legal research necessary in the ordinary course of business. In those cases when an extraordinary volume of photocopying is required and the job is completed by our outside contractor, we will charge the Town at our cost.

We will advance on your behalf charges for such necessary services and costs as outside-communication services, messenger services, and court fees. Such items will be charged monthly as they are received and processed by the firm. We will submit certain charges directly to you for prompt payment.

For necessary travel to and from _____ for meetings, the Town will be billed for half of the travel time for a round trip. The Town will not be billed for any mileage.

From: Jim Cox
To: Vicki Vivian; Danna Judd
Subject: FW: Sample contract for an on call city attorney
Date: Friday, September 27, 2013 12:03:12 PM
Attachments: Agreement for Legal Services.doc

Attach to Attorney Blue Sheet.

Jim

James F. Cox
Interim City Manager, City of Benson
120 W Sixth Street
Benson, AZ 85602
520-720-6314 (Direct Telephone Line)
520-265-0024 (Cell)
520-586-0630 (FAX)
jcox@cityofbenson.com

From: peter.w@powerc.net [mailto:peter.w@powerc.net]
Sent: Tuesday, September 10, 2013 1:40 PM
To: Jim Cox
Subject: Fw: Sample contract for an on call city attorney

Hi Jim,

Here is a re-forward of the contract email.

Best Wishes,

Peter Wangsness

(M) (520) 661-6313

Note: No trees were killed in the sending of this message, but a large number of electrons were terribly inconvenienced.

From: peter.w@powerc.net
Sent: Friday, September 06, 2013 2:26 PM
To: Jim Cox
Subject: Fw: Sample contract for an on call city attorney

Hi Jim,

Here is the email from Sims lll with his typical contract.

Best Wishes,

Peter Wangsness

(M) (520) 661-6313

Note: No trees were killed in the sending of this message, but a large number of electrons were terribly inconvenienced.

From: Bill Sims
Sent: Friday, September 06, 2013 12:03 PM
To: peter.w@powerc.net
Subject: RE: Sample contract for an on call city attorney

Mr. Wangsness:

Here is form that I have used with another jurisdiction. Yes, Jeff Murray of my firm has been retained by the Risk Pool to represent the Benson in the Stagecoach litigation. His client is Benson. If I were your City Attorney, Benson would also be my client.

Sorry for the delay in getting back to you. I got back to Phx after the three days at the League Conference and then got sidetracked with the three day holiday weekend.

The Cities and Towns I represent:

1. Safford
2. Globe
3. Jerome
4. Camp Verde
5. Tusayan

The hourly rate is negotiable and ranges from $195-$225

William J. Sims III
Sims Murray, Ltd.
2020 N. Central Avenue, Suite 670
Phoenix AZ 85004
Direct: 602-772-5501
Fax: 602-772-5509
Cell: 602-524-0575
Legal Assistant: 602-772-5502
wjsims@simsmurray.com

From: peter.w@powerc.net [mailto:peter.w@powerc.net]
Sent: Friday, September 06, 2013 10:41 AM
To: Bill Sims
Subject: Sample contract for an on call city attorney
Importance: High

Hi

Hi Mr. Sims,

I gave you my card at the league while attending several of your seminars. We are in the process of looking for a new attorney and when you mentioned that you represent several cities on an "on call" basis I thought this may be the best way to go. Would you email me a copy of such a contract? Also if you could send me the list of cities you currently represent this way? We have a regular council meeting next Monday, the 9th and I would like to present copies of a contract to our other members.

Do you have any connection with Stagecoach Trail vs. City of Benson? Would there be a conflict? Can it be avoided?

Best Wishes,

Peter Wangsness,
Council Member

City of Benson
PO Box 2223
Benson, AZ 85602

peter.w@powerc.net
pwangsness@cityofbenson.com

(M) (520) 661-6313

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Version: 2012.0.2242 / Virus Database: 3222/6143 - Release Date: 09/06/13

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2242 / Virus Database: 3222/6143 - Release Date: 09/06/13

From: Jim Cox
To: Vicki Vivian; Danna Judd
Subject: FW: Attorney Bill Sims
Date: Friday, September 27, 2013 12:03:30 PM

Jim

James F. Cox
Interim City Manager, City of Benson
120 W Sixth Street
Benson, AZ 85602
520-720-6314 (Direct Telephone Line)
520-265-0024 (Cell)
520-586-0630 (FAX)
jcox@cityofbenson.com

From: peter.w@powerc.net [mailto:peter.w@powerc.net]
Sent: Wednesday, September 11, 2013 11:29 AM
To: Chris Gibbs
Cc: Jim Cox
Subject: Re: Attorney Bill Sims

Hi Chris,

Thank you for your quick and thoughtful response. The reports I am getting backing from cities like you that he serves does indeed coincide with the impression I had of him at various League seminars.

Best Wishes,

Peter Wangsness,
Council Member

City of Benson
PO Box 2223
Benson, AZ 85602

(M) (520) 661-6313
pwangsness@cityofbenson
peter.w@powerc.net

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From: Chris Gibbs

Sent: Wednesday, September 11, 2013 11:04 AM
To: peter.w@powerc.net
Subject: RE: Attorney Bill Sims

Peter,

I don't know of any attorneys in Arizona more qualified than Bill Simms!

His willingness to work with small towns makes him an incredible asset for us and for others. He tracks hours for us meticulously and I believe his work for us has saved the City hundreds of thousands over the past 4-5 years. We're very pleased with his services!

Chris Gibbs, Mayor
City of Safford

Mobile: 928-432-9855
mayorgibbs@ci.safford.az.us

From: peter.w@powerc.net [mailto:peter.w@powerc.net]
Sent: Friday, September 06, 2013 2:11 PM
To: Chris Gibbs
Cc: Jim Cox
Subject: Attorney Bill Sims

Hi Mayor Gibbs

We are currently looking for a new city attorney. I have been contacting cities that are currently represented by William Sims lll of Sims Murray, ltd. We are interested in how he has been working out for you and how his contract based fees have worked out financially for you. Any opinions would be greatly appreciated. Thank you

Best Wishes,

Peter Wangsness,
Council Member

City of Benson
PO Box 2223
Benson, AZ 85602

(M) (520) 661-6313
pwangsness@cityofbenson
peter.w@powerc.net

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From: Jim Cox
To: Vicki Vivian; Danna Judd
Subject: FW: attorney William Sims lll
Date: Friday, September 27, 2013 12:03:48 PM

Jim

James F. Cox
Interim City Manager, City of Benson
120 W Sixth Street
Benson, AZ 85602
520-720-6314 (Direct Telephone Line)
520-265-0024 (Cell)
520-586-0630 (FAX)
jcox@cityofbenson.com

From: Peter Wangsness [mailto:peter.w@powerc.net]
Sent: Tuesday, September 10, 2013 12:49 PM
To: Jim Cox
Cc: Peter Wangsness
Subject: FW: attorney William Sims lll

Hi Jim,

Another Mayor responds. I could not tell if you were copied so I am forwarding this.

Best Wishes,

Peter Wangsness

From my WP8 Phone

From: Wheeler
Sent: 9/10/2013 12:30 PM
To: peter.w@powerc.net
Subject: Re: attorney William Sims lll

Councilman Wangsness,

We in Globe are very pleased to have obtained the services of Mr. Bill Simms as our Attorney. Besides being a fine person, he is a competent and accomplished attorney. If he does represent you, in my opinion, you will be well served.

Sincerely, Terry Wheeler - Mayor of Globe

> ----- Original Message -----
> **From:** peter.w@powerc.net
> **To:** Terence Wheeler

Cc: Jim Cox
Sent: Friday, September 06, 2013 2:17 PM
Subject: attorney William Sims lll

Hi Mayor Wheeler

We are currently looking for a new city attorney. I have been contacting cities that are currently represented by William Sims lll of Sims Murray, ltd. We are interested in how he has been working out for you and how his contract based fees have worked out financially for you. Any opinions would be greatly appreciated. Thank you

Best Wishes,

Peter Wangsness,
Council Member

City of Benson
PO Box 2223
Benson, AZ 85602

(M) (520) 661-6313
pwangsness@cityofbenson
peter.w@powerc.net

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From: Jim Cox
To: Vicki Vivian; Danna Judd
Subject: FW: Attorney William Sims
Date: Friday, September 27, 2013 12:04:28 PM

Jim

James F. Cox
Interim City Manager, City of Benson
120 W Sixth Street
Benson, AZ 85602
520-720-6314 (Direct Telephone Line)
520-265-0024 (Cell)
520-586-0630 (FAX)
jcox@cityofbenson.com

From: Greg Bryan [mailto:gbtusayan@gmail.com]
Sent: Saturday, September 07, 2013 7:08 PM
To: <peter.w@powerc.net>
Cc: Jim Cox
Subject: Re: Attorney William Sims

Good evening Councilman Wangsness

We have utilized the services of Bill Sims for almost three years and are very happy with his work. He is a true champion of municipal government and especially small towns. He works hard to give you the best advice possible and is very open when he feels others input is needed. He listens and responds appropriately. He is very fair in his billing and does not spend billable time casually. He is in tune with small towns and our resources.

I would recommend him without question.

Feel free to call with any additional questions.

Respectfully,

Greg Bryan
Mayor, Town of Tusayan
928-638-8401 Gbtusayan@gmail.com

Sent from my iPad

On Sep 6, 2013, at 2:13 PM, <peter.w@powerc.net> wrote:

> Hi Mayor Bryan,
>
> We are currently looking for a new city attorney. I have been contacting cities that are currently represented by William Sims lll of Sims Murray, ltd. We are

interested in how he has been working out for you and how his contract based fees have worked out financially for you. Any opinions would be greatly appreciated. Thank you

Best Wishes,

Peter Wangsness,
Council Member

City of Benson
PO Box 2223
Benson, AZ 85602

(M) (520) 661-6313
pwangsness@cityofbenson
peter.w@powerc.net

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From: peter.w@powerc.net
To: Jim Cox
Cc: Toney King; Al Sacco; Ron Brooks; Chris Moncada; Jeff Cook; Vicki Vivian; Peter Wangsness
Subject: Fw: Bill Sims Reference
Date: Friday, September 27, 2013 2:51:17 PM

Hi Jim,

Upon reviewing Agenda item 4 regarding consideration of Mr. Simms for City Attorney I noticed that the email from Town Manager of Camp Verde, Russ Martin, was missing. While 3 glowing reviews are good, I am forwarding his email shown below. I hope we can shorten the selection process with his selection. I am not trying to control the selection, but with such recommendations from Mayors and managers, it would seem hard to go wrong with him. I think it would be prudent for him to attend in person for the first 3-6 months of meetings so we get to know each other. After that he is willing to attend telephonically if we wish at no charge to us unless we ask him questions or direct action. If we end up with streaming video some time he could also watch us.

Best Wishes,

Peter Wangsness

Wangsness Optics
123-A Harvest Way
PO Box 2104
Benson, AZ 85602
(M) (520) 661-6313

Note: No trees were killed in the sending of this message, but a large number of electrons were terribly inconvenienced.

From: peter.w@powerc.net
Sent: Friday, September 06, 2013 2:24 PM
To: Jim Cox
Subject: Fw: Bill Sims Reference

Hi Jim,

I talked to Russ over the phone and he gave a glowing review. Mr. Sims lll appears to take saving the city very seriously, often telling them that the City Clerk can do something and not charging.

I will also forward the email from Mr. Sims lll which includes his typical contract. Once you

have them all perhaps you can send it out to all who need to get it.

Best Wishes,

Peter Wangsness

Wangsness Optics
123-A Harvest Way
PO Box 2104
Benson, AZ 85602
(M) (520) 661-6313

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From: Russ Martin
Sent: Friday, September 06, 2013 1:15 PM
To: peter.w@powerc.net
Subject: Bill Simms Reference

Councilor,

Per our conversation earlier I want to say to others who may be interested. Mr. Simms in my 3 years here has been as advertised from the Council and Staff that were here much longer. His ability to work with me as the Manager to control costs of attorney's by engaging only as necessary, often suggesting staff draft items to save money and only as necessary drafting has saved our budget thousands. He is a very responsive contract attorney and has an unbelievable amount of experience in municipal work. Bottom line he gives you what you need and nothing more in an attempt to be conscience of costs, unless it is asked.

My only issue, if it is even considered an issue, has been he is willing to defend whatever direction Council may request and although that is not a bad thing as he is a great strategy/contract attorney, occasionally we need to really push him for his professional opinion on a split Council issue to help us truly understand which direction will protect us better.

I have really enjoyed working with him and trust his knowledge and experience as I believe Council's and Staff before me have as well.

Russ Martin
Town Manager
473 South Main Street, Ste. 102
Camp Verde, AZ 86322
russ.martin@campverde.az.gov
[P] 928.554-0001

[F] 928.567.8291

Effective August 27, 2012, Hours of operations for all Town offices are Monday - Thursday 7 am to 5 pm and Friday 7 am to 11 am.

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Furthermore, to ensure compliance with the Open Meeting Law, Council or Board/ Commission / Committee members who are recipients of this message should not forward it to other members of the Council or Board / Commission / Committee of the Town of Camp Verde. Council Members or Board / Commission / Committee members may reply to a staff member regarding this message, but they should not send a copy of a reply to other Council or Board / Commission / Committee members.

Please consider our environment before printing this email.

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Version: 2012.0.2242 / Virus Database: 3222/6143 - Release Date: 09/06/13

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Version: 2012.0.2242 / Virus Database: 3222/6143 - Release Date: 09/06/13