

**TOWN OF FLORENCE
REGULAR MEETING
AGENDA**

PURSUANT TO A.R.S. § 38-431.02, NOTICE IS HEREBY GIVEN TO THE MEMBERS OF THE FLORENCE TOWN COUNCIL AND TO THE GENERAL PUBLIC THAT THE FLORENCE TOWN COUNCIL WILL HOLD A MEETING OPEN TO THE PUBLIC ON MONDAY, APRIL 1, 2013, AT 5:30 P.M., IN THE CHAMBERS OF TOWN HALL, LOCATED AT 775 NORTH MAIN STREET, FLORENCE, ARIZONA.

1. CALL TO ORDER

- 2. ROLL CALL: Mayor Rankin___; Vice-Mayor Smith___;
Councilmembers: Tom Celaya___; Bill Hawkins___;
Ruben Montaña___; Tara Walter___; Vallarie Woolridge___;**

3. ADJOURN TO EXECUTIVE SESSION

For the purpose of discussion of the public body with the Town Attorney to receive legal advice regarding draft Ordinance No. 594-13; and for discussion of pending litigation involving Ordinance No. 583-12 in accordance with A.R.S. § 38-431.03(A)(3)(4).

4. ADJOURN FROM EXECUTIVE SESSION

5. INVOCATION PERFORMED BY REVEREND DR. EDWARD KAVIMBA LUNGU, GRACE BIBLE REFORMED CHURCH.

6. PLEDGE OF ALLEGIANCE

7. CALL TO THE PUBLIC

Call to the Public for public comment on issues within the jurisdiction of the Town Council. Council rules limit public comment to three minutes. Individual Councilmembers may respond to criticism made by those commenting, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of Council shall not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

8. CONSENT: All items indicated by an (*) will be handled by a single vote as part of the consent agenda, unless a Councilmember or a member of the public objects at the time the agenda item is called.

- a. *Acceptance of a \$500.00 donation from Jack and Barbara Hamilton to the Police Department Donation Account to be used for family assistance.**
- b. *Authorization to enter into a Residential Property Lease Agreement with Charles A. Montoya, for the property located at 745 South Central Avenue, Florence, Arizona, 85132.**

- c. ***Ratification of a Special** Event Liquor License Application submitted by Sonoita Vineyards, for Wine Festival/Wine Fair License, being held April 4, 2013, at the Union Center for Wellness and Higher Learning, in Florence, Arizona.
- d. ***Ratification of a Special** Event Liquor License Application submitted by Wilhelm Family Vineyards, for Wine Festival/Wine Fair License, being held April 4, 2013, at the Union Center for Wellness and Higher Learning, in Florence, Arizona.
- e. ***Authorization to approve** the disposal and donation of fire hose, consisting of 16-100 foot sections of 4 inch hose, to the City of Globe Fire Department.
- f. ***Authorization to approve** the Agricultural Lease with Morning Star Farming, L.L.C., subject to final lease modifications that may be negotiated between the Town Manager and Morning Star Farming, L.L.C.
- g. ***Approval of the Town** of Florence Organization Chart dated April 1, 2013.

9. UNFINISHED BUSINESS

- a. **Ordinance No. 593-13:** Discussion/Approval/Disapproval of AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, AMENDING THE TOWN OF FLORENCE CODE OF ORDINANCES, TITLE XV LAND USAGE, CHAPTER 150 DEVELOPMENT CODE, SECTIONS 150.031 DEFINED WORDS, 150.047 DISTRICT USE REGULATIONS TABLES (A), 150.047 DISTRICT USE REGULATIONS TABLES (B), 150.048 RURAL AGRICULTURAL (RA-10), 150.049 RURAL AGRICULTURAL (RA-4), 150.064 LIGHT INDUSTRIAL (LI) AND 150.065 HEAVY INDUSTRIAL (HI) (First Reading and Public Hearing held March 18, 2013).

10. NEW BUSINESS

- a. **Discussion/Approval/Disapproval** to award a contract to CORE Construction Inc. for design-build services for the design and construction of Fire Station #2, located at 1905 North Hunt Highway, Florence, Arizona, in the amount of \$2,820,000.00.
- b. **Ordinance No. 594-13:** Discussion/Approval/Disapproval of AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, RESCINDING ORDINANCE NO. 583-12 – NAUSEOUS, OFFENSIVE AND UNWHOLESOME BUSINESSES PROHIBITED, AND DECLARING AN EMERGENCY.

11. CALL TO THE PUBLIC


12. CALL TO THE COUNCIL

13. ADJOURNMENT

Council may go into Executive Session at any time during the meeting for the purpose of obtaining legal advice from the Town's Attorney(s) on any of the agenda items pursuant to A.R.S. § 38-431.03(A)(3).

POSTED THE 29th DAY OF MARCH 2013, BY LISA GARCIA, TOWN CLERK, AT 775 NORTH MAIN STREET, 1000 SOUTH WILLOW STREET, FLORENCE, ARIZONA AND AT WWW.FLORENCEAZ.GOV.

*****PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), THE TOWN OF FLORENCE DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY REGARDING ADMISSION TO PUBLIC MEETINGS. PERSONS WITH A DISABILITY MAY REQUEST REASONABLE ACCOMMODATIONS BY CONTACTING THE TOWN OF FLORENCE ADA COORDINATOR, AT (520) 868-7574 OR (520) 868-7502 TDD. REQUESTS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATION.*****

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8a.
MEETING DATE: April 1, 2013 DEPARTMENT: Finance STAFF PRESENTER: Becki Guilin, Finance Director SUBJECT: Police Donation		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Accept the donation of \$500.00 for family assistance.

BACKGROUND/DISCUSSION:

Donations in the amount of \$500 or more must be accepted by the Town Council, as per our Gift Acceptance Policy.

We have received a check in the amount of \$500.00 from Jack and Barbara Hamilton. They have requested the monies be used for family assistance.

FINANCIAL IMPACT:

To assist families as deemed necessary by the Police Chief.

STAFF RECOMMENDATION:

Accept the donation of \$500.00.

ATTACHMENTS:

Copy of check and Gift Acceptance Form.

GIFT ACCEPTANCE FORM

Date: March 7, 2013

A. Donor Name: **Jack & Barbara Hamilton** Phone _____

Address, City, State, Zip P.O. Box 481, Florence, AZ 85132

B. GIFT DESCRIPTION (include estimated value of gift)

Cash in the amount of **\$500.00**

FACILITY AND SITE RECOMMENDATION (Attach sketch/map if possible)

a. Name of park or facility: _____

b. Proposed location in park or facility: _____

2. ESTIMATED COST OF:

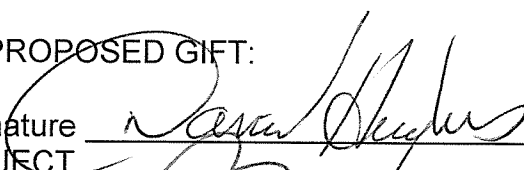
a. Delivery	\$ _____
b. Site Preparation	
i. Installation	\$ _____
ii. Utilities	\$ _____
c. Annual Maintenance	\$ _____
d. Planning	\$ _____
e. Design	\$ _____
f. Public Involvement	\$ _____
g. Project Management	\$ _____
h. Other: _____	\$ _____
TOTAL	\$ _____

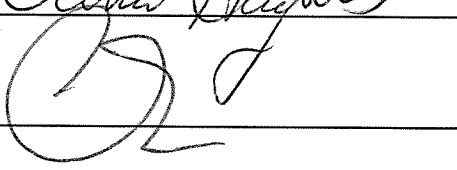
3. LIFE EXPECTANCY _____ years.

4. OTHER IMPACTS (contingencies by donor; vandalism, etc.)

Designated to Police Family Assistance Fund

C. RECOMMENDATION ON PROPOSED GIFT:

1. Department Head Signature  _____
 APPROVE REJECT

2. Town Manager Signature  _____
 APPROVE REJECT



COPY



JACK D. HAMILTON
BARBARA S. HAMILTON
P.O. BOX 481
FLORENCE, AZ 85232

91-7211-3221

423

Mar. 5, 2013

Pay to the order of Town of Florence \$500.⁰⁰

Five hundred and no Dollars


PINAL COUNTY FEDERAL CREDIT UNION
P.O. BOX 969, FLORENCE, AZ 85232

For Donation To Police Family Assistance Fund Jack D. Hamilton NP



PARCHEMENT

Security Features
Included
Details on Back.

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8b.
MEETING DATE: April 1, 2013 DEPARTMENT: Administration STAFF PRESENTER: James E. Mannato, Town Attorney SUBJECT: Lease Agreement With Town Manager Charles A. Montoya		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Motion to approve a month-to-month lease agreement for 745 S. Central Avenue with Town Manager Charles A. Montoya.

BACKGROUND/DISCUSSION:

The home on 745 S. Central Avenue, also known as “High School House” was sold by the Town of Florence in April of 2011, and then was taken back by the Town in November of that year, through foreclosure, when the owner did not pay the mortgage.

Most recently, 745 S. Central Avenue was rented to Police Chief Daniel Hughes during his transition to employment with the Town of Florence.

Town Manager Charles A. Montoya, who is making the transition from Castle Rock, Colorado, has requested to rent 745 S. Central Avenue on a month-to-month basis while he makes the transition from Colorado to Arizona with his family.

The lease would be on a month-to-month basis so that Mr. Montoya can take residence in his new home in Florence when that becomes ready.

The lease payment would be \$600.00 per month.

ANALYSIS

Leasing 745 S. Central Avenue would provide revenue to the Town while allowing the Town Manager the convenience of living close to work while finalizing his transition to a permanent residence.

STAFF RECOMMENDATION

Enter into a month-to-month lease agreement with Town Manager Charles A. Montoya.

ATTACHMENTS:

Proposed Lease Agreement

RESIDENTIAL LEASE AGREEMENT

745 South Central Avenue
Florence, Arizona 85132
APN #202-09-037D

THIS RESIDENTIAL PROPERTY LEASE made and entered into this 1st day of April, 2013 by and between the **TOWN OF FLORENCE**, an Arizona municipal corporation hereinafter referred to as **TOWN**, and Charles A. Montoya, hereinafter referred to as **TENANT**.

WHEREAS, TOWN and TENANT have discussed the joint benefits to be derived by the TOWN allowing the TENANT to lease the TOWN'S premises located at 745 Central Avenue, Florence, Arizona and agree that it is in their mutual best interests to enter into an agreement outlining the terms and expectations for the same.

NOW, THEREFORE, the Parties agree as follows:

1. The TOWN, does hereby lease, let and demise unto the TENANT the premises located at 745 South Central Avenue, Florence, Arizona together with all furniture and fixtures located therein, if any. An inventory of all furniture and fixtures will be conducted and retained on file by the TOWN upon execution of this agreement.
2. The term of this Lease shall commence on April 8, 2013 and will continue thereafter from month to month until terminated by TOWN or TENANT pursuant to the terms of this Agreement.
3. TENANT shall pay rent to the TOWN in the amount of \$600.00 (Six hundred dollars and no cents) per month with such rents due on the 8th day of each month.
4. The Lease shall continue from month to month unless notice of termination is provided by the TOWN or TENANT no less than thirty (30) days prior to the end of any month of the lease.
5. The TOWN shall maintain the power, heating and refrigeration units of the demised premises, and shall keep and maintain the inside walls, floors, doors, ceiling and partitions of the demised premises, in the same condition as the date the lease is signed. The TOWN shall maintain the outside of the building but not the landscaping and the parking area, maintenance of which shall be the responsibility of TENANT. Town agrees to perform mold, termite treatment and general pest control measures to the premises, to include reptile eradication if necessary.

6. The TENANT shall have sole responsibility for the payment of the following utilities or utility services provided to or upon the Premises during any term of the Lease: electricity, gas, water, sewer, trash collection, telephone service, cable television service or Internet service.
7. The TOWN shall have the right to enter the premises upon reasonable notice of at least 48 hours to make repairs or improvements.
8. It is understood and agreed that no renovation or installation of fixtures shall be made by the TENANT without first obtaining written approval from the TOWN. Further, that any of the furniture, fixtures and equipment installed in the demised premises by the TENANT shall remain the property of the TENANT, and the TENANT with the approval of the TOWN shall have the right to remove any such furniture, fixtures and equipment on the expiration of this Lease. The TENANT shall not remove any fixtures and equipment if there is a default in any of the terms and conditions of this Lease, or if such removal would result in damage to the premises. TENANT may undertake reasonable improvements to the premises with the consent of the Town, including but not limited to landscaping, during the term of the Lease. Upon review and approval by the TOWN of any receipts and invoices for such improvements, TENANT shall be afforded a credit against rent due or to become due in the agreed upon amount of such improvements.
9. In using said premises, the TENANT shall comply with all laws, statutes, ordinances, rules and regulations of the Federal, State and local government, and of their agencies, departments or bureaus applicable to the said premises, for the correction, prevention and abatement of nuisances or other grievances on or in connection with the said premises.

10. Insurance and Indemnification

Town shall obtain and keep in force during any term of this Lease, a policy or policies of insurance covering loss or damage to the Leased Premises, in the amount of the full replacement value thereof, providing protection against all perils included within the classification of fire, flood, extended coverage, vandalism, malicious mischief and special extended perils.

TENANT agrees that TOWN shall not be liable for injury to TENANT's employees, invitees, customers, or any other person in or about the Leased Premises; nor shall TOWN be liable for injury to the person or property of TENANT, TENANT's employees, agents or contractors, whether such damage or injury to persons or property is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or light fixtures or from any other cause; or whether the said damage or injury to person or property results from conditions arising upon the Leased Premises or from other sources

or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to TENANT.

11. Upon the expiration of this Lease, the TENANT shall deliver quiet and peaceable possession of the demised premises in as good condition as it is at the time of acceptance and signing of the lease, except for reasonable wear and tear. In the event of the TENANT's failure to comply with the terms, covenants and conditions of this Lease and Agreement, the TOWN shall have the right, in addition to any other remedy allowed by law, to forthwith terminate this Lease and recover possession of the demised premises as if they were held by forcible detainer, and the TENANT hereby waives any notice or demand for possession thereof.
12. The TENANT shall not assign this Lease and Agreement or underlet or sublet the demised premises or any portion thereof, without the prior written consent of the TOWN.
13. Any and all notices and other communications required or permitted to be given hereunder shall be deemed or permitted to be given if in writing, personally delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed as set forth below or at such other address as the parties may designate in writing:

Town of Florence	Charles A. Montoya
Lisa Garcia	Tenant
Deputy Town Mgr.	745 S. Central Avenue
P.O. Box 2670	Florence, AZ 85132
775 N. Main Street	
Florence, AZ 85132	

14. This Lease and Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona, with Pinal County being the proper venue for any legal action which may arise between the parties.
15. If an action is brought by either party with respect to its rights or obligations under this Lease and Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs as determined by the court.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

TOWN OF FLORENCE:

TENANT:

Tom J. Rankin, Mayor


Charles A. Montoya

ATTEST:

Lisa Garcia, Town Clerk

APPROVED AS TO FORM:

James E. Mannato, Town Attorney

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8c.
MEETING DATE: April 1, 2013 DEPARTMENT: Administration STAFF PRESENTER: Lisa Garcia, Town Clerk SUBJECT: Wine Festival/Wine Fair License		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Authorization to ratify the Town Clerk’s favorable recommendation to the Arizona Department of Liquor Licenses and Control regarding Sonoita Vineyards application for a Wine Festival License/Wine Fair License for April 4, 2013.

BACKGROUND/DISCUSSION:

A Wine festival license allows a licensed domestic farm winery to serve samples of its products on the wine festival premises, the sale of such products for consumption on the wine festival premises, and the sale of such products in original containers for consumption off the wine festival premises. The license is subject to the approval of the governing body where the wine festival is to take place. The Department may issue up to twenty five (25) wine festival licenses for each calendar year for each licensed domestic farm winery, for up to a cumulative total of seventy five (75) calendar days per winery.

A Wine fair license allows a licensed domestic farm winery to serve samples of its products at a sanctioned county or state fair, the sale of such products for consumption on the fair premises and the sale of such products in original containers for consumption off the fair premises. Wine fair license: The license is subject to the permission of the fair organizers.

FINANCIAL IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends the Council ratifying the favorable recommendation forwarded to the Arizona Department of Liquor Licenses and Control.

ATTACHMENTS:

Application

Town of Florence
P.O. Box 2670
775 North Main Street
Florence, Arizona 85132

Phone (520) 868-7500
Fax (520) 868-7501
TDD (520) 868-7502

www.florenceaz.gov

TOWN SERVICES

Building Safety
868-7573

Community Development
868-7575

Finance
868-7624

Fire
868-7609

Grants
868-7513

Human Resources
868-7545

Library
868-8311

Municipal Court
868-7514

Parks & Recreation
868-7589

Police
868-7681

Public Works
868-7620

Senior Center
868-7622

Town Attorney
868-7557

Utility Billing
868-7680

Water/Wastewater
868-7677

March 14, 2013

Arizona Department of Liquor Licenses & Control
800 W. Washington, 5th Floor
Phoenix AZ 85007

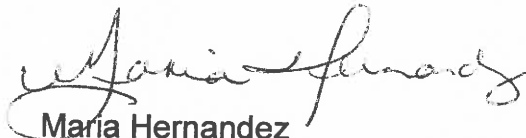
Re: Application for Wine Festival License/Wine Fair License

To Whom It May Concern:

Enclosed please find the above-mentioned application of Gordon R. Dutt for Sonoita Vineyards, D.F.W. License #13120002 for Thursday, April 4, 2013.

Please contact Lisa Garcia, Deputy Town Manger/Town Clerk at 520-868-7552 or email at lisa.garcia@florenceaz.gov, should you have any questions.

Sincerely,



Maria Hernandez
Deputy Town Clerk
Town Clerk's Office

c: Gordon R. Dutt
File

State of Arizona Department of Liquor Licenses and Control
800 W. Washington, 5th Floor
Phoenix, AZ 85007
www.azliquor.gov
(602)542-5141

APPLICATION FOR WINE FESTIVAL LICENSE/WINE FAIR LICENSE

FEE = \$15.00 per event

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44-6852)

A separate license is needed when days are not consecutive. Only twenty-five (25) licenses per calendar year for up to seventy-five calendar days may be issued, excluding sanctioned county or state fair licenses.

1. Applicant's Name: Dutt Gordon R
Last First Middle

2. Business Name: Sonoita Vineyards D.F.W. Lic#: 13120002
(Domestic Farm Winery License #)

3. Location of Festival: Union Center for Wellness & Higher Learning Florence Pinal 85132
(Physical location - Do not use PO Box) City County Zip

4. Mailing Address: HC1 Box 33 Elgin AZ 85611
City State Zip

5. Date and hours of festival:

<u>DATE</u>	<u>DAY OF WEEK</u>	<u>HOURS FROM</u>	<u>HOURS TO</u>
<u>4/4/2013</u>	<u>Thursday</u>	<u>6:00pm</u> a.m./p.m.	<u>10:00pm</u> a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.
_____	_____	_____ a.m./p.m.	_____ a.m./p.m.

6. Name and address of site owner: Union Center for Wellness and Higher Learning
Last First Middle

3925 N. Sun City Blvd Florence AZ 85132
Address City State Zip

7. Phone Numbers: (520) 723-6610 (520) 455-5893 (520) 297-2850
Site Owner Applicant's Business Applicant's Residence

* Disabled individuals requiring special accommodation, please call (602) 542-9027.

8. Has the festival site owner given permission for use of the site and for the sale of spirituous liquors? YES NO
9. Are the spirituous liquors to be sold or served Arizona Domestic Farm Winery Products ONLY? YES NO
10. How many wine festival licenses have you applied for this calendar year, including this one? 2

Give the total number of days you have held licensed wine festivals this year 1

11. What security and control measures will you take to prevent violations of state liquor laws at this event?
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

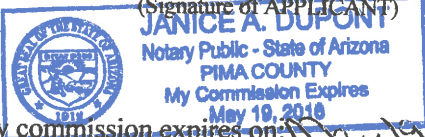
0 # Police Fencing
0 # Security personnel Barriers

Attendee's are all senior citizen wine club members there will be no children or underage persons at this event.

ID's will be checked at the door.

12. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your wine festival/fair licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

I, Gordon R Dutt, hereby declare that I am the APPLICANT filing this application. I
 (Print full name)
 have read the application and the contents and all statements are true, correct and complete.

X Gordon R Dutt State of Arizona County of Santa Cruz
 (Signature of APPLICANT) The foregoing instrument was acknowledged before me this
14th day of March, 2013
 Day Month Year

 My commission expires on: May 19, 2016
Janice A. Dupont
 (Signature of NOTARY PUBLIC)

*** FOR USE BY LOCAL GOVERNING AUTHORITY ONLY ***

I, Lisa Garcia, hereby APPROVE DISAPPROVE this application on behalf of
 (Government Official)
Florence Town Clerk x [Signature]
 (City, Town, or County) (Title) (Signature of OFFICIAL)

*** FOR USE BY DLLC ONLY ***

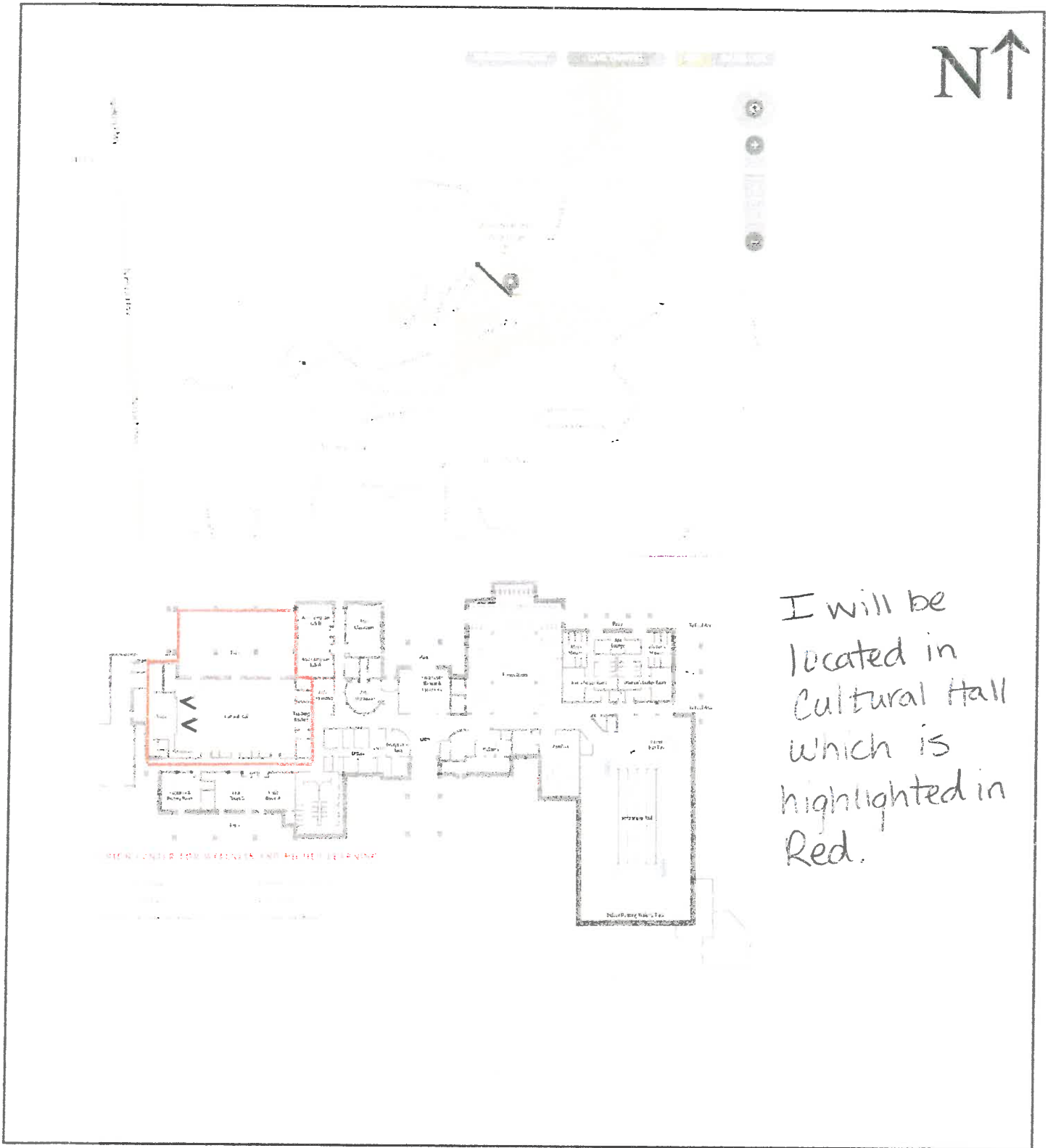
APPROVED DISAPPROVED

By: Date:

WINE FESTIVAL/FAIR LICENSED PREMISES DIAGRAM

(This diagram must be completed with this application)

NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.
(Show dimensions, serving areas, and label type of enclosure and security positions)



ROBI P REYNOLDS
LORI M REYNOLDS
5268 S ROSS RD
SAFFORD, AZ 85546-9341

5120

91-527/1221 958
8505556368

3/14/2013
Date

Pay to the
Order of

Arizona State

\$ 15.00

Fifteen and 00/100

Dollars



Security
Features
Details on
Back



Wells Fargo Bank, N.A.
Arizona
wellsfargo.com

For


series 1b License

Robi Reynolds
MP

⑆ 122605278⑆ 8505556368⑆ 05120

Harland Clark

HO-5000-AROUND

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8d.
MEETING DATE: April 1, 2013 DEPARTMENT: Administration STAFF PRESENTER: Lisa Garcia, Town Clerk SUBJECT: Wine Festival/Wine Fair License		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <ul style="list-style-type: none"> <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Authorization to ratify the Town Clerk’s favorable recommendation to the Arizona Department of Liquor Licenses and Control regarding Wilhelm Vineyards application for a Wine Festival License/Wine Fair License for April 4, 2013.

BACKGROUND/DISCUSSION:

A Wine festival license allows a licensed domestic farm winery to serve samples of its products on the wine festival premises, the sale of such products for consumption on the wine festival premises, and the sale of such products in original containers for consumption off the wine festival premises. The license is subject to the approval of the governing body where the wine festival is to take place. The Department may issue up to twenty five (25) wine festival licenses for each calendar year for each licensed domestic farm winery, for up to a cumulative total of seventy five (75) calendar days per winery.

A Wine fair license allows a licensed domestic farm winery to serve samples of its products at a sanctioned county or state fair, the sale of such products for consumption on the fair premises and the sale of such products in original containers for consumption off the fair premises. Wine fair license: The license is subject to the permission of the fair organizers.

FINANCIAL IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends the Council ratifying the favorable recommendation forwarded to the Arizona Department of Liquor Licenses and Control.

ATTACHMENTS:

Application

Town of Florence
P.O. Box 2670
775 North Main Street
Florence, Arizona 85132

Phone (520) 868-7500
Fax (520) 868-7501
TDD (520) 868-7502

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868-7545

Library
868-8311

Municipal Court
868-7514

Parks & Recreation
868-7589

Police
868-7681

Public Works
868-7620

Senior Center
868-7622

Town Attorney
868-7557

Utility Billing
868-7680

Water/Wastewater
868-7677

March 20, 2013

Arizona Department of Liquor Licenses & Control
800 W. Washington, 5th Floor
Phoenix AZ 85007

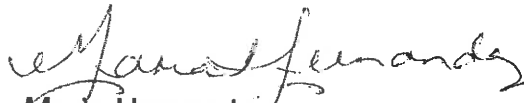
Re: Application for Wine Festival License/Wine Fair License

To Whom It May Concern:

Enclosed please find the above-mentioned application of Karyl Lee Wilhem, for Wilhem Family Vineyards, , D.F.W. License #13123010 for Thursday, April 4, 2013, along with Check # 10384 for \$15.00.

Please contact Lisa Garcia, Deputy Town Manger/Town Clerk at 520-868-7552 or email at lisa.garcia@florenceaz.gov, should you have any questions.

Sincerely,


Maria Hernandez
Deputy Town Clerk
Town Clerk's Office

c: Karyl lee Wilhelm
File

Wilhelm Family Vineyards
21 Mountain Ranch Drive
Elgin, AZ 85611
520-455-9291


COMPASS BANK
211 S Carmichael Ave
Sierra Vista, AZ 85635
91-574/1221

10384

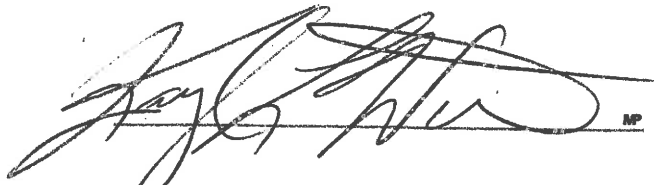
3/13/2013

PAY TO THE ORDER OF AZ Dept of Liquor

\$ **15.00

Fifteen and 00/100***** DOLLARS 

AZ Dept of Liquor
800 W. Washington
Phoenix, AZ 85007-2934



© 2005 INTUIT INC. # 872 1-866-439-8010

MEMO

13123010

⑈0 10384⑈ ⑆ 122105744⑆ 25074 11064⑈

State of Arizona Department of Liquor Licenses and Control
800 W. Washington, 5th Floor
Phoenix, AZ 85007
www.azliquor.gov
(602)542-5141

APPLICATION FOR WINE FESTIVAL LICENSE/WINE FAIR LICENSE

FEE = \$15.00 per event

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44-6852)

A separate license is needed when days are not consecutive. Only twenty-five (25) licenses per calendar year for up to seventy-five calendar days may be issued, excluding sanctioned county or state fair licenses.

1. Applicant's Name: Wilhelm Karyl Lee
Last First Middle

2. Business Name: Wilhelm Family Vineyards D.F.W. Lic#: 13123010
(Domestic Farm Winery License #)

3. Location of Festival: Sun City Anthem Union Center Florence Pinal 85132
(Physical location - Do not use PO Box) City County Zip

4. Mailing Address: 21 Mountain Ranch Dr Elgin AZ 85611
City State Zip

5. Date and hours of festival:

Table with 4 columns: DATE, DAY OF WEEK, HOURS FROM, HOURS TO. Row 1: April 4, 2013, Thursday, 6:00 pm, 9:00pm.

6. Name and address of site owner: Stemple Patricia
Last First Middle
3925 N. Sun City Blvd Florence AZ 85132
Address City State Zip

7. Phone Numbers: (520) 723-6610 (520) 455-9291 (520) 455-9291
Site Owner Applicant's Business Applicant's Residence

* Disabled individuals requiring special accommodation, please call (602) 542-9027.

- 8. Has the festival site owner given permission for use of the site and for the sale of spirituous liquors? YES NO
- 9. Are the spirituous liquors to be sold or served Arizona Domestic Farm Winery Products **ONLY**? YES NO
- 10. How many wine festival licenses have you applied for this calendar year, including this one? 6

Give the total number of days you have held licensed wine festivals this year 9

11. What security and control measures will you take to prevent violations of state liquor laws at this event?
 (List type and number of security/police personnel and type of fencing or control barriers if applicable)

- 1 # Police
- 1 # Security personnel
- Fencing
- Barriers

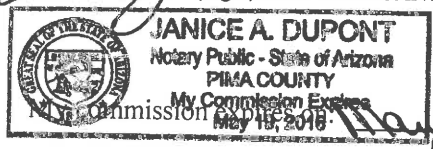
Enclosed hall w/ all participants checked for age.

12. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your wine festival/fair licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

I, Karyl L. Wilhelm, hereby declare that I am the APPLICANT filing this application. I have read the application and the contents and all statements are true, correct and complete.

Karyl L. Wilhelm
 (Signature of APPLICANT)

State of Arizona County of Santa Cruz
 The foregoing instrument was acknowledged before me this 13th day of March, 2013



Janice A. Dupont
 (Signature of NOTARY PUBLIC)

*** FOR USE BY LOCAL GOVERNING AUTHORITY ONLY ***

I, Lisa Garcia, hereby APPROVE DISAPPROVE this application on behalf of Florence Town Clerk

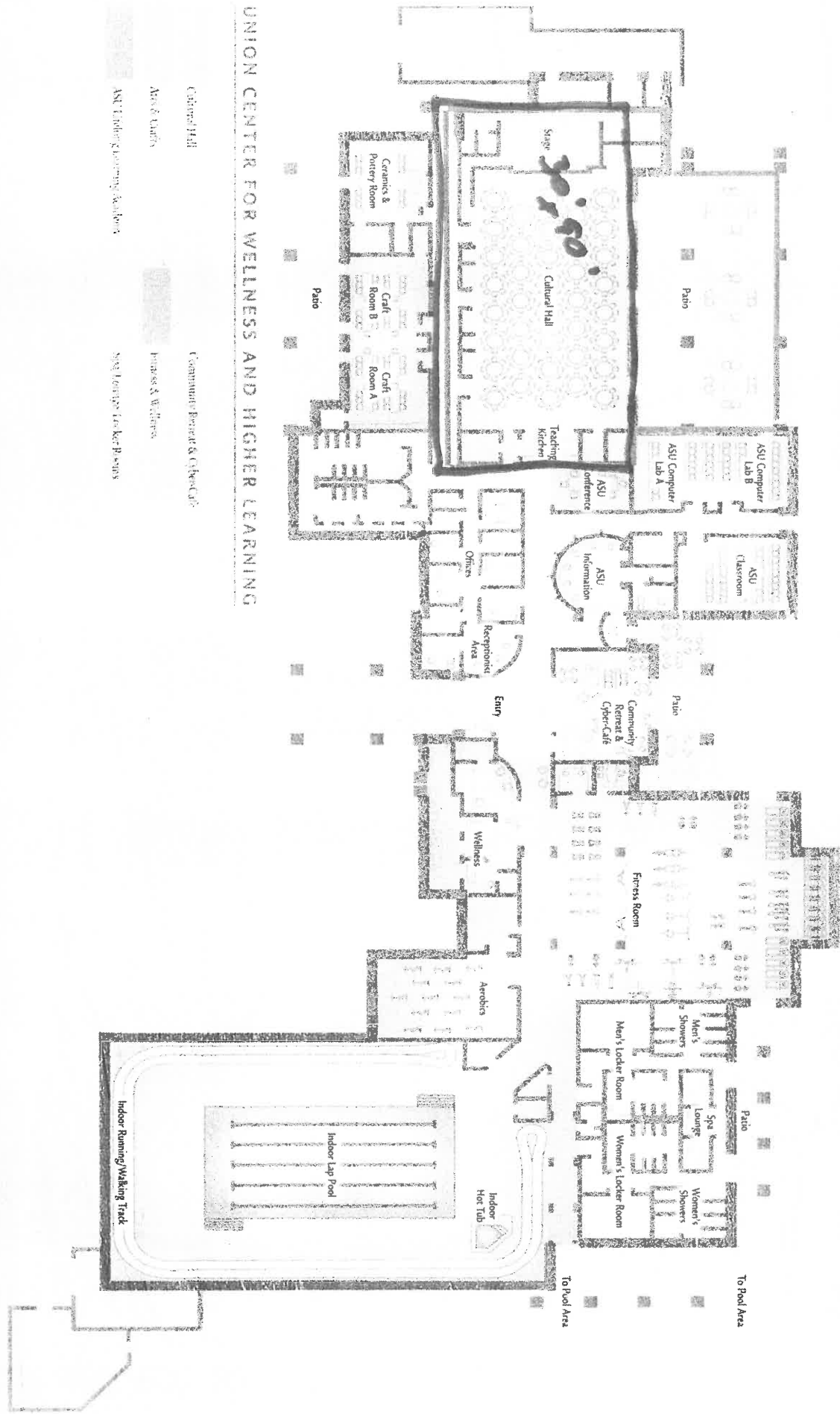
[Signature]
 (Signature of OFFICIAL)

*** FOR USE BY DLLC ONLY ***

- APPROVED
- DISAPPROVED

By: Date:

UNION CENTER FOR WELLNESS AND HIGHER LEARNING



Cultural Hall

ASU Office

ASU Teacher Learning Lab Room

Computer Repair & Client Care

Business & Wellness

Spa Lounge for Ker-Basis

To Pool Area

To Pool Area

Entry

Wellness

Aerobics

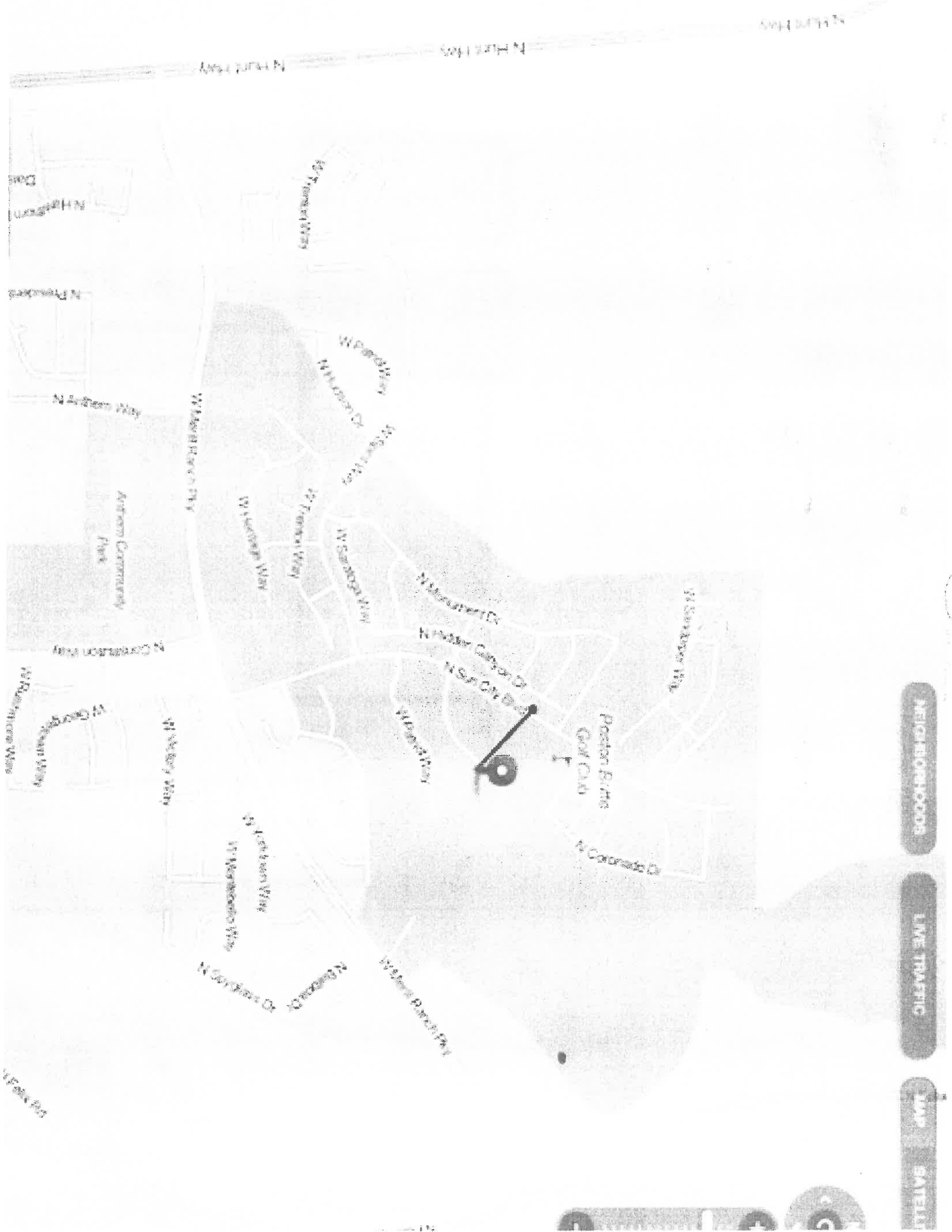
Indoor Running/Walking Track

Patio

Patio

Patio

Patio



NEIGHBORHOODS

LIVE TRAFFIC

MAP

SAATELLI

Map labels include:

- Proctor Park Golf Club
- N Colorado Dr
- N Sun City Blvd
- N Boulder Dr
- N Boulder Park Dr
- N 1st St
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- N 100th St

Wilhelm Family Vineyards
21 Mountain Ranch Drive
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211 S Carmichael Ave
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91-574/1221

10384


3/13/2013

PAY TO THE
ORDER OF AZ Dept of Liquor

\$ **15.00

Fifteen and 00/100***** DOLLARS 


AZ Dept of Liquor
800 W. Washington
Phoenix, AZ 85007-2934



MEMO
13123010

⑈0 10384⑈ ⑆ 122105744⑆ 25074 11064⑈

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	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8e.
MEETING DATE: April 1, 2013 DEPARTMENT: Fire/Finance STAFF PRESENTER: Becki Guilin, Finance Director SUBJECT: Disposal of Assets		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Authorize the disposal of fire hose that has outlived its standard life cycle and to donate the fire hose to the City of Globe Fire Department.

BACKGROUND/DISCUSSION:

The departments have a number of vehicles, equipment, and small assets that are no longer needed and/or have outlived their useful life. The Town of Florence has converted to a 5" fire hose with life term of 10 yrs.

The Fire Department is taking out of service and replacing fire hose that has expired its standard life cycle and test standards.

The City of Globe, Arizona, has requested the hose be donated to them for their use. It consists of 16 - 100 foot sections of 4 inch fire hose. Globe Fire Department does not follow the same standards as the Town of Florence does.

This donation falls within our Disposal Policy for a government to public use donation.

FINANCIAL IMPACT:

The total salvage value of the items is estimated at \$50 per section, for a total of \$800.

STAFF RECOMMENDATION:

Staff recommends approval for disposal and donation of fire hose to the City of Globe Fire Department.

ATTACHMENTS:

Disposed Asset Form

Disposed Asset Form

Capital Asset No. MINOR ASSETS No# Date: 3/12/2013

Description of Asset: 16-100 ft sections of 4" fire hose.

Department: FIRE Division: OPERATIONS

Location of Disposition: _____

Asset Lost Stolen Destroy Outlived Useful Life
 Other _____

Give a detailed account of what happened to asset including witnesses, other employees, or your facts including a copy of the police report attached (if applicable).


Firehose has expired standard life cycle and test standards. Fire hose is proposed to be donated to GLOBE FIRE DEPARTMENT.

Department Manager: [Signature] Date: 3/12/2013

Reviewed by: [Signature] Date: 3/12/2013
Finance Director or Representative

Authorized by: [Signature] Date: 3/12/2013
Town Manager or Representative

Prepared by: N/A Entered by: N/A

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8f.
MEETING DATE: April 1, 2013 DEPARTMENT: Community Development STAFF PRESENTER: Mark Eckhoff, AICP Community Development Director SUBJECT: Agricultural Lease Extension for Town Properties		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Motion to approve the Agricultural Lease with Morning Star Farming, L.L.C.

BACKGROUND/DISCUSSION:

The leased premise consists of two parcels that add up to approximately 182 acres. The subject land is located north of Heritage Park within the area of the Town Council endorsed North End Framework Vision Plan and the planned Territory Square Zoning District. The Town has been leasing the subject land for farming purposes ever since the land was acquired from the Giles family.

Over the past couple of years, the Town has set in place new plans for the subject area. The Town is under contract for FEMA CLOMR/LOMR engineering services for the Territory Square properties to proceed with long term floodplain reclamation plans. The first 40 acre site, which is the site of future municipal library and recreational facilities, to be taken to the CLOMR stage is entirely located within the subject leased area.

Any mass grading or overly disruptive development efforts related to the Territory Square plans and particularly the 40 acre LOMR site will be deferred until the lease expires at the end of March 2014. However, over the next year, the Town, as well as the Town's agents and contractors, and Morning Star Farms, L.L.C. will have to work together to ensure that pre-development planning and engineering work and farming activities can exist side by side. The Town values the agricultural use of this area and the relationship with the Bagnall family and will make every effort to ensure the continued vitality of the farming operations over the term of this lease. Staff notes that the Town has discussed the terms of this lease with the Bagnall family and they understand the future plans for the subject area and have no objections to this lease.

FINANCIAL IMPACT:

Morning Star Farming, L.L.C. will pay the Town \$11,000 for the term of the lease. The Town does not incur any costs related to this lease.

RECOMMENDATION:

Motion to approve the Agricultural Lease with Morning Star Farming, L.L.C.

ATTACHMENT:

Agricultural Lease

AGRICULTURAL LEASE

TOWN OF FLORENCE, ARIZONA,
an Arizona municipal corporation

AND

MORNING STAR FARMING, L.L.C.,
an Arizona limited liability company

DATE: April 1, 2013

AGRICULTURAL LEASE

This Lease made and entered into this ____ day of _____, 2013 by and between the TOWN OF FLORENCE, an Arizona municipal corporation, hereinafter referred to as "Florence", and MORNING STAR FARMING, L.L.C, an Arizona limited liability company, hereinafter referred to as "MORNING STAR".

WITNESSETH:

Florence, in consideration of the rent to be paid and the faithful performance of the covenants, promises and agreements hereinafter contained, does hereby lease, let and demise unto MORNING STAR, the farmland located in Pinal County, Arizona. The complete legal description of the subject property as shown in Exhibit A herein, together with any and all other improvements, wells, pumping equipment and buildings located or situated thereon, said real property and improvements being hereinafter referred to as the "Leased Premises". It is hereby agreed by and between the Florence and MORNING STAR that the combined total acreage of all parcels subject to the lease is 182 acres, more or less.

TO HAVE AND TO HOLD the same for the term of one (1) year and three (3) months retroactively commencing on January 1, 2013 and ending on March 31, 2014 subject however, to all the terms hereinafter set forth as follows;

1. MORNING STAR shall, during the term of this Lease, properly and in a good and farmerlike manner prepare, plant, irrigate, cultivate and harvest cotton and other crops on so much of the demised premises as shall be in conformity with any governmental crop allotment programs, so long as there is sufficient water to comply with the same. MORNING STAR may, at its option, participate in any farm programs of the United States Government applicable to the cotton, wheat, or feed grain allotments for the leased premises and any payments received therefrom shall belong solely to MORNING STAR, provided that MORNING STAR shall plant, cultivate and mature a sufficient acreage of each crop to protect the allotment history on the demised premises.
2. MORNING STAR shall pay to Florence, as and for rent for the leased premises during the term of this lease eleven thousand dollars (\$11,000), payable as follows; \$11,000.00 on or before the 30th day of April of each year during the term of this Lease.
3. MORNING STAR shall furnish all farm machinery, tools and equipment necessary to properly prepare, plant, cultivate, irrigate and mature crops grown on the demised premises. In the event it is necessary for MORNING STAR to obtain the necessary crop financing, Florence shall waive their landlord's lien upon any crops grown on the leased premises, so long as MORNING STAR is not in default on any of the provisions of this lease for the term of the lease.

4. It is further agreed that with the expiration of this Lease agreement or any extension thereof, MORNING STAR shall have a reasonable time to complete the harvest and removal of any matured crop growing thereon. Florence agrees that MORNING STAR may request in writing an extension of the lease term at any time on or after January 2, 2014 and Florence shall indicate its intent to either renew or terminate the lease prior to the expiration of the current lease. Florence notes that current development plans within the leased premises may preclude any future lease extensions or cause the leased premises to be modified substantially.
5. MORNING STAR shall be responsible and shall pay, when due and before delinquent, all obligations incurred by them in connection with their occupancy of the leased premises, and with the farming of crops thereon, including the cost of water or excess water used on or about the leased premises. MORNING STAR further agrees that they will not allow any such charges, or any other debts, liabilities or claims to be, or to become, a lien upon the leased premises, or any other debts, liabilities or claims to be, or to become, a lien upon the leased premises, or any part thereof, including the personal property located thereon. MORNING STAR agrees to pay any additional water assessment costs above the base assessment as established by the San Carlos Irrigation and Drainage District (“SCIDD”).
6. MORNING STAR agrees to indemnify, protect and hold Florence harmless from and against any and all claims, actions or causes of action, for death, personal injury or property damage occurring on the demised premises during the term of this Lease, and MORNING STAR will not permit or allow any labor or materialman’s or mechanic’s lien to attach to the demised premises. MORNING STAR shall maintain a comprehensive liability policy with a combined single limit of \$100,000.00 for each occurrence with respect to personal injury or property damage, and Florence shall be named as additional insured on said policy. A copy of the Certificate of Insurance shall be furnished to Florence.
7. MORNING STAR shall diligently fight Johnson grass or other noxious weeds or plants of any kind on the demised premises and shall employ all reasonable means of control or eradication thereof.
8. No assignment of this Lease or any sub-lease of the demised premises shall be valid unless the same is approved by Florence.
9. Florence shall have the right to lease or otherwise hypothecate the demised premises to any person or corporation for development and mineral purposes; however, such lease or hypothecation shall not interfere with MORNING STAR’s farming and shall be in accordance with the provisions of this lease.
10. MORNING STAR shall, during the term of this Lease, comply with all of the rules and regulations of the Arizona Commission of Agriculture and Horticulture or its successor, relative to the pink bollworm program.

11. MORNING STAR shall keep all ditches, fences, and flumes located on the demised premises in as good a state of repair as they were at the commencement or as added during the period of this Lease, except for ordinary wear and tear.
12. Notwithstanding other Paragraphs contained within the Lease, Florence will not make any improvements to the existing well during the term of this lease. It is understood and agreed by Florence and MORNING STAR that MORNING STAR shall have no liability whatsoever for damage, destruction or loss to any above-ground well improvements on the property that are caused by theft, vandalism, criminal damage, or other criminal acts.
13. MORNING STAR shall, at the expiration or sooner termination of this Lease, deliver to Florence quiet and peaceable possession of the demised premises. In the event of MORNING STAR's failure to strictly comply with all the terms, covenants and conditions hereof, Florence shall have the right, in addition to any other remedy allowed by law, to forthwith terminate this Lease and take possession of the property.
14. It is hereby understood and agreed that MORNING STAR shall use the demised premises only for growing agricultural crops and purposes incident thereto.
15. Nothing in this lease shall prohibit Florence from proceeding with zoning and preliminary development plans relating to the leased premises, which could include but not be limited to engineering work related to current FEMA CLOMR/LOMR work, as envisioned per Florence's approved North End Framework Vision Plan, Territory Square Zoning District, Capital Improvement Projects and Town facility planning. However, Florence shall make all reasonable efforts to proceed with the aforementioned plans over the period of this lease in a manner that does not impact the viability and functionality of the lease agreement.
16. This Lease shall be construed in accordance with and governed by the laws of the State of Arizona, with Pinal County being the proper venue for any legal action which may arise between the parties.
17. If any action is brought by either party with respect to their rights or obligation under this Lease, the prevailing party shall be entitled to reasonable attorney's fees and court costs as determined by the court.
18. The terms and conditions contained herein shall not be interpreted against either Florence or MORNING STAR as the maker hereof.
19. This Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto.
20. MORNING STAR recognizes that yearly lease amount is subject to increases due to water tax increases and property tax increases.

TOWN OF FLORENCE, an Arizona municipal corporation

Tom J. Rankin, Mayor

Date

ATTEST:

APPROVED AS TO FORM:

Lisa Garcia, Town Clerk

James Mannato, Town Attorney

MORNING STAR FARMING, L.L.C., an Arizona limited liability company

Member

Date

This Agricultural Lease Affidavit is made pursuant to A.R.S. Section 42-1615.

STATE OF ARIZONA)
) ss.
County of Pinal)

On this _____ day of _____, 2013, before me, the undersigned officer, personally appeared _____ who acknowledged himself/herself to be the Managing Partner of MORNING STAR FARMING, L.L.C. and that he/she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A

APN No. 200-40-011A

APN No. 200-40-016

Town
Hall

Heritage
Park


Gila River

PINAL PARKWAY

ing™

7th St
Spine St
Resome St
6th St
Main St
4th St
Church St
Ruggles St
1st St
3rd St
5th St
7th St
9th St
11th St
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Microsoft Corporation

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 8g.
MEETING DATE: April 1, 2013 DEPARTMENT: Administration STAFF PRESENTER: Charles A. Montoya, Town Manager SUBJECT: Organization Chart		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <ul style="list-style-type: none"> <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Approval of the Town of Florence Organization Chart dated April 1, 2013.

BACKGROUND/DISCUSSION:

Several changes have taken place in the organization since the January 22, 2013 hiring of Town Manager Charles Montoya. At this time all departments are reporting directly to the Town Manager, Divisions are reporting the Deputy Town Manager. The Town has reduced the number of Deputy Manager's from two to one. The Town is establishing the department of Utility Director.

FINANCIAL IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends approving the Town of Florence Organizational Chart dated April 1, 2013.

ATTACHMENTS:

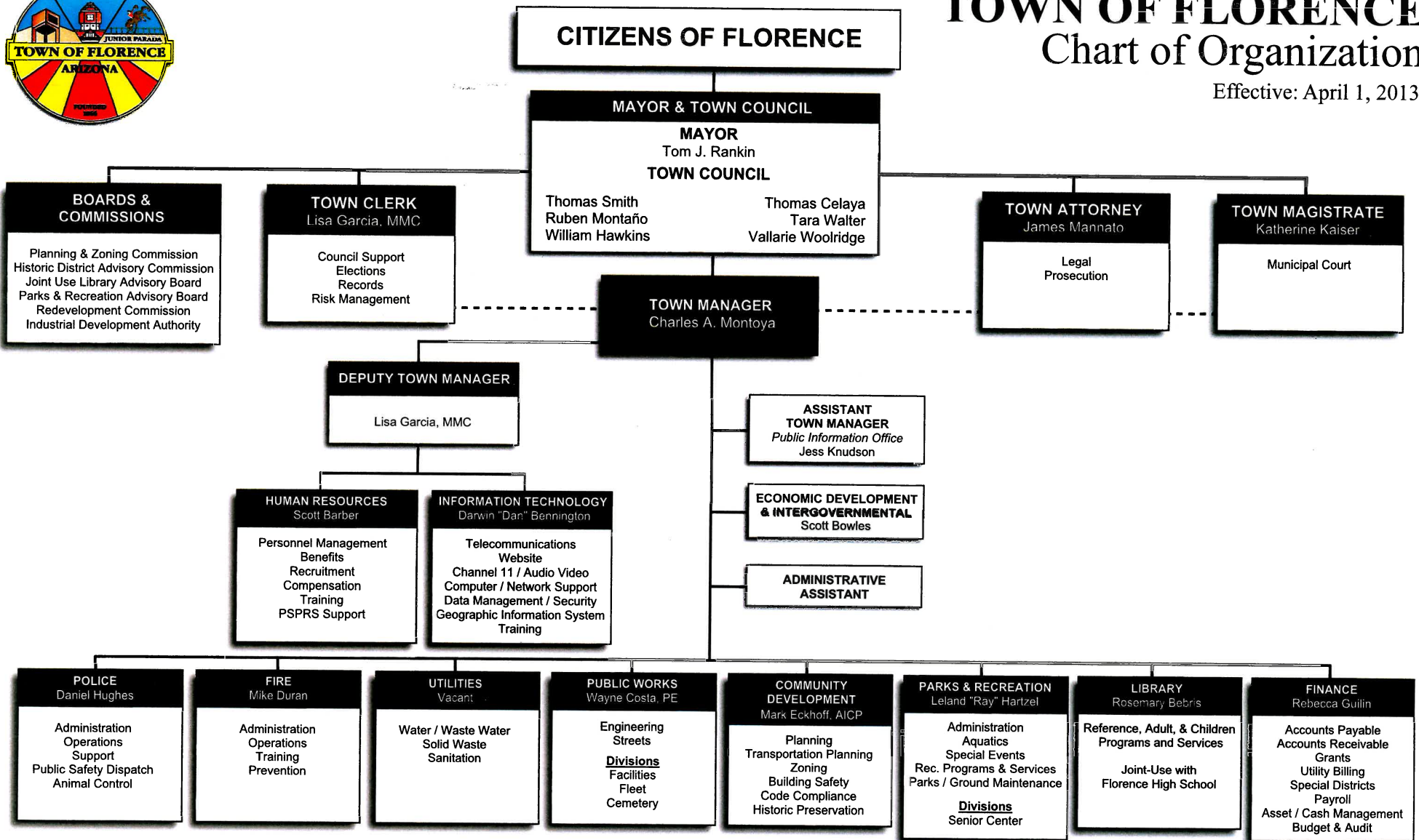
Organizational Chart




TOWN OF FLORENCE

Chart of Organization

Effective: April 1, 2013



	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 9a.
MEETING DATE: April 1, 2013 DEPARTMENT: Community Development STAFF PRESENTER: Mark Eckhoff, AICP Community Development Director SUBJECT: Ordinance 593-13, (PZC-02-13-ORD) Development Code Text Amendment		<input type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1 st Reading <input checked="" type="checkbox"/> 2 nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Adoption of Ordinance No. 593-13 for the Development Code Text Amendment.

BACKGROUND/DISCUSSION:

The Town of Florence requests approval of the following application:

PZC-02-13-ORD: A Text Amendment application by the Town of Florence amending the Town of Florence Code of Ordinances. More specifically, an Ordinance of the Town of Florence, Pinal County, Arizona amending Title XV: Land Usage, Chapter 150 Development Code, Sections 150.031 Defined Words, 150.047 District Use Regulations Tables (A), 150.047 District Use Regulations Tables (B), 150.048 Rural Agricultural (RA-10), 150.049 Rural Agricultural (RA-4), 150.064 Light Industrial (LI) and 150.065 Heavy Industrial (HI). (PZC-02-13-ORD)

The Town's Development Code should be reviewed on a regular basis and updated to provide greater clarification where needed, remove redundancies and address deficiencies that are noted over time. The Mayor and Town Council conducted a work session addressing various proposed text amendments to the Development Code that would be pursued and this report reflects the direction provided to staff at the work session.

Major changes proposed are summarized as follows:

1. To formalize the past zoning interpretation of the Community Development Director, which was also discussed and validated during the recent zoning process for the proposed CCA expansion. Staff is proposing that correctional facilities and similar uses be specifically defined in the Development Code and listed in the use tables. This change is consistent with past operating procedures and the Town's General Plan.
2. Per the direction of Council, staff is proposing more clarity regarding agricultural and farming uses. These changes continue to support general farming and agricultural uses, but place limitations on more industrial and intense types of uses such as dairies, slaughterhouses and similar uses that could have dramatic impacts (noise, odors, etc.) to surrounding properties.
3. To reduce the potential for conflicting interpretations, various uses that were already listed in the land use tables were removed from their respective district sections.
4. Churches and public schools were removed from the land use tables based on provisions of State and Federal laws. Public schools are not subject to zoning and churches may locate in any zoning district by right, subject to complying with basic development standards.
5. Where some uses were identified in the Code, but not defined and their definition could be open for interpretation, staff proposed new definitions. Staff is proposing commonly accepted definitions of big box retail, manufacturing and light manufacturing. This also changes the terminology used for manufacturing uses.
6. Staff is also proposing the removal of the current definition for restaurant so that restaurants simply fall into two categories: sit down or drive-thru.
7. Other minor changes reflect suggestions made over time by the Mayor and Town Council, Planning and Zoning Commission, Historic District Advisory Commission and Economic Development Coordinator.

These changes will complement recent text amendments processed. Other changes are being worked on at this time and will be presented for discussion at a later date.

FINANCIAL IMPACT:

This request has no direct or specific financial impacts.

RECOMMENDATION:

This Amendment was discussed at a Town Council work session and subsequently presented to the Planning and Zoning Commission on February 7, 2013, which forwarded a unanimous favorable recommendation on this case to the Town Council.

ATTACHMENT:

Ordinance No. 593-13

**TOWN OF FLORENCE
ORDINANCE NO. 593-13**

AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY ARIZONA AMENDING THE TOWN OF FLORENCE CODE OF ORDINANCES, TITLE XV LAND USAGE, CHAPTER 150 DEVELOPMENT CODE, SECTIONS 150.031 DEFINED WORDS, 150.047 DISTRICT USE REGULATIONS TABLES (A), 150.047 DISTRICT USE REGULATIONS TABLES (B), 150.048 RURAL AGRICULTURAL (RA-10), 150.049 RURAL AGRICULTURAL (RA-4), 150.064 LIGHT INDUSTRIAL (LI) AND 150.065 HEAVY INDUSTRIAL (HI).

WHEREAS, development codes are designed to protect the health, safety and general welfare of the public and are subject to modifications to ensure that codes are current and meet the needs of the local community; and

WHEREAS, deficiencies have been noted in current development codes pertaining to the aforementioned sections; and

WHEREAS, the Town of Florence has proposed this Ordinance to address such deficiencies and ensure that our local development codes pertaining to the aforementioned sections are appropriate and current for the Town of Florence; and

WHEREAS, the Florence Planning and Zoning Commission conducted a public hearing on this Ordinance and they have sent the Mayor and Council of the Town of Florence a favorable recommendation on this proposed Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Florence, Arizona, as follows: that the Town of Florence Code of Ordinances, Title XV Land usage, Chapter 150 Development Code, Sections 150.031 Defined Words, 150.047 District Use Regulations Tables (A), 150.047 District Use Regulations Tables (B), 150.048 Rural Agricultural (RA-10), 150.049 Rural Agricultural (RA-4), 150.064 Light Industrial (LI) and 150.065 Heavy Industrial (HI) is hereby amended.

Section 1. That the recitals contained in this Ordinance are hereby adopted and incorporated herein as findings of the fact of the Mayor and Council of the Town of Florence.

Section 2. That if any word, sentence, paragraph, clause, phrase or other provisions of this ordinance is for any reason deemed to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such holdings shall not affect the validity of the remaining words, sentences, paragraphs, clauses, phrases or other provisions of this ordinance, it being the legislative intent that in

such event the remainder of this ordinance shall stand, notwithstanding the invalidity of any word, sentence, paragraph, clause, phrase or other provision.

§ 150.031 DEFINED WORDS.

CORRECTIONAL FACILITY. A facility for the detention, confinement, treatment and/or rehabilitation of persons arrested or convicted for the violation of civil or criminal law. Such facilities include an adult detention center, juvenile delinquency center, pre-release center, correctional community treatment center, jail and prison, but exclude a municipal or county jail facility that is an accessory use to a police station, sheriff's office or other associated governmental facility.

FARM. An area of ~~ten~~ four or more contiguous acres ~~which~~ that is used for the production of farm crops such as vegetables, fruit trees, cotton, grain and other crops and their storage on the area, as well as raising thereon of farm animals, such as poultry, horses, cattle or swine. Farms may not include commercial feedlots, slaughterhouses, packing plants, dairies or swine operations. ~~FARMS~~ also include dairy produce; provided, however, that farming does not include commercial pen feeding (feed lots) or the commercial feeding of garbage or offal to swine or other animals. Farming shall also include horse breeding and training but shall not include riding stables.

HALFWAY HOUSE. A facility for the housing, rehabilitation, and training of persons on probation, parole, or early release from correctional institutions, or other persons found guilty of criminal offenses.

MANUFACTURING. An establishment engaged in the manufacture or compounding process of raw materials. Such activities may include the storage of large volumes of materials needed for the manufacturing process.

MANUFACTURING, LIGHT. A predominantly indoor establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products.

PLASMA DONATION CENTER. A medical clinic that accepts blood product donations, particularly plasma, and provides monetary payment for donations.

RETAIL, BIG BOX. Any single use building, whether stand alone or within a multi-building development, wherein said single use building occupies at least one-hundred thousand (100,000) square feet of building coverage primarily devoted to, or intended for, the sale or display of goods and merchandise for consumption by the general public, including any outdoor sales and display area(s) and storage/stockroom area(s), but excluding any outdoor area for the sale of cars, trucks, boats, recreational vehicles, or manufactured homes. For the purposes of this definition, calculation of such building area(s) shall include all

other indoor and outdoor sales areas or customer service area(s) that may be incidental to, but nevertheless share customer walking aisles or store entrances with the big box retail use operator, whether or not such area(s) are under the same management as the big box retail use operator.

REFINERY A permanent facility for the purpose of refining, processing, storing, and or delivery of fossil fuels byproducts including, but not limited to, gasoline, diesel fuel and motor oil. Uses include those that store such products such as liquefied natural gas (LNG), compressed natural gas (CNG), butane, and propane.

TATTOO, BODY PIERCING ESTABLISHMENT. Any establishment offering indelible designs, letters, scrolls, figures, symbols or other marks that are placed on or under the skin with ink or colors by the aid of needles or other instruments and that cannot be removed without a surgical procedure; any establishment offering designs, letters, scrolls, figures or symbols or other marks done by scarring/branding on or under the skin; any establishment where decorations or other devices are inserted into the skin; any establishment using techniques such as penetrating, perforating, boring or creating a hole in the skin or another human body part; or any establishment whose primary function is permanent body alteration for non-surgical purposes. The following establishments shall be exempt from this definition: those where offering permanent facial make-up/cosmetics ancillary to the primary business; those where procedures are performed by a person authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture and the procedures are performed in conformity with the standards of that profession; those where procedures are performed by registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopath; those where the only type of piercing offered is ear piercing.

TOBACCO RETAILER. Any person or business who primarily sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to, tobacco shops, cigars and pipe retailer, cigarette or electronic cigarette retailer and smoking establishments.

§ 150.047 DISTRICT USE REGULATIONS TABLES.

(A) Residential zoning district use regulations.

P=Permitted N=Not Permitted C=Conditional T=Temporary Uses

Use	RA-10	RA-4	R1-R	R1-18	R-1-6	R-2	MFR	MHS	PUD
Church	€	€	€	€	€	€	€	€	€

Feedlot	C	C	N	N	N	N	N	N	N
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(B) Employment and/or commercial zoning district use regulations.

P=Permitted N=Not Permitted C=Conditional T=Temporary Uses

Use	B-1	B-2	TRC	NO	PO	DC	PI	LI	HI
Automobile wrecking yards	N	N	N	N	N	N	N	<u>C</u> <u>N</u>	<u>P</u> <u>C</u>
Church	C	C	C	C	C	C	C	C	C
<u>Correctional facility</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>
<u>Dairy/feedlot</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>
<u>Farm</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Halfway house</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>
<u>Immigration processing and/or holding facility</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>
Feedlot	N	N	N	N	N	N	N	C	P
Manufacturing within enclosed building	N	P	C	N	N	N	N	P	P
Manufacturing other than above	N	C	N	N	N	N	N	C	P
<u>Manufacturing, light</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Manufacturing</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>P</u>
<u>Plasma donation center</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Refinery</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>

<u>Restaurants without entertainment, dancing, serving of alcohol or drive-through facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>C</u>	<u>C</u>
<u>Restaurants without drive-thru</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Tattoo, body piercing establishment</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Tobacco retailer</u>	<u>N</u>	<u>P</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
<u>Junk yard/salvage yard</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>

§ 150.048 RURAL AGRICULTURAL (RA-10).

(A) *Purpose.* The rural agricultural (RA-10) district is intended to preserve agricultural land and the agricultural heritage and aesthetic of the area. Land use is composed of farming, agriculture and the raising of livestock, together with a single-family residence and customary accessory uses and buildings.

(B) *Permitted uses.* The following uses are permitted in the RA-10 zone:

~~(1) Dwelling, single-family on any lot or parcel;~~

~~(2) Accessory buildings (see § 150.172) and uses, including private swimming pools and home occupations;~~

~~(3) Farm;~~

~~(4) Guesthouse, detached;~~

~~(5) Ranch, non-commercial;~~

~~(6) Recreation fields, public or private; and~~

~~(7) Usual agricultural buildings and structures; and~~

(1) Those uses permitted in the RA-10 Zoning District per Table 150.047.A.

~~(C) Conditional uses. The following uses may be permitted subject to a conditional use permit (see § 150.015). Uses may be permitted subject to a Conditional Use Permit (see § 150.015 and Table 150.047.B).~~

~~(1) Church;~~

~~(2) Cemetery;~~

~~(3) Golf course (except miniature course or practice driving tee operated for commercial purpose), including clubhouse and service facilities which are intended to primarily serve golf course uses and are no closer than 300 feet to any exterior boundary of the golf course, except that the facilities shall have direct access from a collector or arterial street or a highway from which they shall be a distance of at least 50 feet;~~

~~(4) Greenhouse and/or nursery;~~

~~(5) Manufactured home;~~

~~(6) Orphanage;~~

~~(7) Public or private school having a curriculum equivalent to a public school and having no room regularly used for housing or sleeping;~~

~~(8) Temporary buildings used for the sale of homes or lots;~~

~~(9) Public institutional buildings, such as hospitals, fire stations and police stations;~~

~~(10) Public utility buildings, structures or appurtenances thereto for public service uses;~~

~~(11) The operation of feedlots, slaughterhouses, fertilizer yards or plants for the reduction of animal matter;~~

~~(12) Stable (commercial) provided the following criteria are met:~~

~~(a) No stable, activity or pasture areas shall be permitted within 40 feet of a residential district or use;~~

~~_____ (b) There shall be a buffer strip, maintained and used as described in § 150.138(C)(3) as it abuts any residential use or district and adjacent to any public street;~~

~~_____ (c) There shall be no shows or other activities which would generate more traffic than is normal to a residential area, unless the proposed site has~~

~~direct access from an arterial street or highway. Permission for the shows and activities may be obtained from the Town Council. Permission shall be requested in a letter that explains the nature and duration of the activity, and accommodations for spectators, traffic and additional parking for cars and trailers. This letter shall be submitted to the Town Clerk at least one week prior to the hearing at which consideration is desired.~~

~~(d) All pasture and animal storage areas shall be enclosed with fences or walls of a minimum of four feet in height;~~

~~(e) All laws applicable to the public health must be complied with for the entire period of operation of the stable;~~

~~(f) All stable, activity and pasture areas that are not grassed shall be treated for dust control to Pinal County Air Quality Control standards; and~~

~~(g) Adequate parking shall be shown on the site plan and improved to municipal standards.~~

(12) (1) Those uses conditionally permitted in the RA-10 Zoning District per Table 150.047.A.

~~Because no list of uses can be exhaustive, decisions on unspecified uses will be rendered by the Planning Commission with appeal to the Town Council.~~

Because no list of uses can be exhaustive, interpretations on unspecified uses shall be rendered by the Town Community Development Director with the right to appeal to the Planning and Zoning Commission and Town Council.

~~(D) Property development standards. (See §§ 150.164 through 150.184 for additional standards and exceptions.) (See Part 8. Additional Height and Area Regulations and Exceptions.)~~

(1) *Setbacks.*

Front	Interior Side	Street Side	Rear
50 feet	50 feet	50 feet	50 feet

(2) *Area and bulk requirements.*

Minimum Site Area	Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Maximum Height

N/A	10 acres	200 feet	200 feet	30 feet
<p>Note: Regulations for distances between buildings, accessory buildings, access, walls, fences and required screening are contained in §§ 150.164 through 150.184. <u>Chapter 150. Development Code.</u></p>				

(E) ~~Off-street Parking.~~ The provisions of ~~§§ 150.156 through 150.163~~ shall apply. The applicable provisions of Part 7. Parking; Loading and Unloading shall apply.

§ 150.049 RURAL AGRICULTURAL (RA-4).

(A) *Purpose.* The rural agricultural (RA-4) district is intended to encourage agricultural use of land, and as a holding zone for land that is not yet needed for more intensive use. ~~Property zoned RA should not be zoned for more intensive use unless there is no other available and developable property zoned for that use within any given area.~~

(B) *Permitted uses.* The following uses are permitted in the RA-4 zone:

~~(1) Dwelling, single-family;~~

~~(2) Accessory buildings (see § 150.258) for property development standards) and uses, including private swimming pool and home occupation;~~

~~(3) Farm;~~

~~(4) Guesthouse, detached;~~

~~(5) Ranch, non-commercial; and~~

~~(6) Recreation fields, public or private; and~~

(1) Those uses permitted in the RA-4 Zoning District per Table 150.047.A.

(C) *Conditional uses.* ~~The following uses may be permitted subject to a conditional use permit (see § 150.015).~~ Uses may be permitted subject to a Conditional Use Permit (see § 150.015 and Table 150.047.B).

~~(1) Manufactured home; s, but not more than one per property parcel;~~

~~(2) Church;~~

~~(3) Cemetery;~~

~~(4) Golf course; (except miniature course or practice driving tee~~

~~operated for commercial purpose), including clubhouse and service facilities which are intended to primarily serve golf course uses and are no closer than 300 feet to any exterior boundary of the golf course, except that the facilities shall have direct access from a collector or arterial street, or a highway from which they shall be a distance of at least 50 feet;~~

~~(5) Greenhouse and/or nursery;~~

~~(6) Manufactured home;~~

~~(7) Orphanage;~~

~~(8) Public or private Private school having a curriculum equivalent to a public school and having no room regularly used for housing or sleeping;~~

~~(9) Temporary buildings used for the sale of homes or lots;~~

~~(10) Public institutional buildings, such as hospitals, fire stations and police stations;~~

~~(11) Public utility buildings, structures or appurtenances thereto for public service uses;~~

~~(12) The operation of feedlots, slaughterhouses, fertilizer yards or plants for the reduction of animal matter; and~~

~~(13) Stable (commercial) provided the following criteria are met:~~

~~(a) No stable, activity or pasture areas shall be permitted within 40 feet of any residential zoning district or use;~~

~~(b) There shall be a buffer strip, maintained and used as described in § 150.138(C)(3) as it abuts any residential use or district and adjacent to any public street;~~

~~(c) There shall be no shows or other activities which would generate more traffic than is normal to a residential area, unless the proposed site has direct access from an arterial street or highway. Permission for the shows and activities may be obtained from the Town Council. Permission shall be requested in a letter that explains the nature and duration of the activity, and accommodations for spectators, traffic and additional parking for cars and trailers. This letter shall be submitted to the Town Clerk at least one week prior to the hearing at which consideration is desired.~~

~~(d) All pasture and animal storage areas shall be enclosed with fences or walls of a minimum of four feet in height;~~

~~(e) All laws applicable to the public health must be complied with for the entire period of operation of the stable;~~

~~(f) All stable, activity and pasture areas that are not grassed shall be treated for dust control to Pinal County Air Quality Control standards; and~~

~~(g) Adequate parking shall be shown on the site plan and improved to municipal standards.~~

~~Because no list of uses can be exhaustive, decisions on unspecified uses will be rendered by the Planning Commission with appeal to the Town Council.~~

(1) Those uses conditionally permitted in the RA-4 Zoning District per Table 150.047.A.

Because no list of uses can be exhaustive, interpretations on unspecified uses shall be rendered by the Town Community Development Director with the right to appeal to the Planning and Zoning Commission and Town Council.

~~(D) Property development standards. (See §§ 150.164 through 150.184 for additional standards and exceptions.) (See Part 8. Additional Height and Area Regulations and Exceptions.)~~

(1) *Setbacks.*

Front	Interior Side	Street Side	Rear
40 feet	20 feet	40 feet	40 feet

(2) *Area and bulk requirements.*

Minimum Site Area	Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Maximum Height
N/A	4 acres	150 feet	150 feet	30 feet

Note: Regulations for distances between buildings, accessory buildings, access, walls, fences and required screening are contained in ~~§§ 150.164 through 150.184.~~ Chapter 150. Development Code.

~~(E) Off-street Parking. The provisions of §§ 150.156 through 150.163 shall apply. The applicable provisions of Part 7. Parking; Loading and Unloading shall apply.~~

§ 150.064 LIGHT INDUSTRIAL (LI).

(A) *Purpose.* The purpose of the Light Industrial zoning district is intended to promote and protect light manufacturing, warehouses and research and development industries, to cluster the industries into attractive planned industrial parks, to minimize incompatibility of industrial uses with adjacent land uses and, provide sufficient space in appropriate locations to businesses and manufacturing firms free from offensive land uses in modern, landscaped buildings and surroundings.

(B) *Permitted uses.* The uses permitted in the LI zone are generally those industrial, office, storage, laboratory and manufacturing uses which do not create any danger to health and safety in surrounding areas and which do not create any offensive noise, vibration, smoke, dust, odor, heat or glare and which, by reason of high value in relation to size and weight of merchandise received and shipped, generate a minimum of truck traffic.

~~(1) Aircraft landing area, provided there are no existing residences or residentially zoned property including NO within 1,000 feet of the landing surface;~~

~~(2) Motion picture production;~~

~~(3) Restaurant;~~

~~(4) Welding shops;~~

~~(5) Contractors offices equipment yards; and~~

(1) Those uses permitted in the LI Zoning District per Table 150.047.B.

(C) *Conditional uses.* Uses may be permitted subject to a Conditional Use Permit (see § 150.015 and Table 150.047.B).

(1) ~~(5)~~ Those uses conditionally permitted in the LI Zoning District per Table 150.047.B.

Because no list of uses can be exhaustive, interpretations on unspecified uses shall be rendered by the Town Community Development Director with the right to appeal to the Planning and Zoning Commission and Town Council.

(D) *Property development standards.* ~~(See §§ 150.164 through 150.184 for additional standards and exceptions.)~~ (See Part 8. Additional Height and Area Regulations and Exceptions.)

(1) *Setbacks.*

Land Use	Minimum Yard Setbacks				Lot Coverage
	Front	Side	Side Street	Rear	
L/I	50 feet *	25 feet/0 **	50 feet * /20 **	25 feet	N/A
<p>** From all streets, 50 feet which shall be maintained as open space, except that access drives may penetrate the open space and parking may cover 15% of the required setback area. The parking shall be screened from the street by a solid fence, wall or landscaping screen of three feet in height.</p> <p>** If alleyway or similar is provided.</p>					

(2) *Area and bulk requirements.*

Minimum Site Area	Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Maximum Height
5 acres	N/A	200 feet	200 feet	60 feet *
<p>*Additional building height allowances up to a maximum of 50 feet may be obtained with a Conditional Use Permit.</p>				

(E) ~~Off-street Parking. The provisions of §§ 150.156 through 150.163 shall apply.~~ The applicable provisions of Part 7. Parking; Loading and Unloading shall apply.

§ 150.065 HEAVY INDUSTRIAL (HI).

(A) *Purpose.* The purpose of the Heavy Industrial zoning district is intended to promote and protect large and intensive industrial manufacturing plants and their appurtenant uses, and to provide attractive and well maintained and planned industrial parks for the location of the activities.

(B) *Permitted uses.*

- (1) ~~Manufacturing;~~
- (2) ~~Quarries;~~
- (3) ~~Feed lots;~~
- (4) ~~Automobile wrecking yards; and~~
- (5) ~~Commercial outdoor kennels;~~

(1) Those uses permitted in the HI Zoning District per Table 150.047.B.

(C) Conditional uses. Uses may be permitted subject to a Conditional Use Permit (see § 150.015 and Table 150.047.B).

~~(1) Hot mix;~~

~~(1) Heavy manufacturing such as automobile manufacturing plants;~~

~~(2) Refineries;~~

~~(3) Outdoor storage yards and junkyards;~~

~~(5) Batch plants, concrete plants and similar uses when not associated with an on-site mining operation;~~

~~(6) Vehicle motor sports facilities; and~~

~~(7) Airports;~~

~~(9) (1) Those uses conditionally permitted in the HI Zoning District per Table 150.047.B.~~

~~— Because no list of uses can be exhaustive, decisions on unspecified uses will be rendered by the Planning Commission with appeal to the Town Council.~~

Because no list of uses can be exhaustive, interpretations on unspecified uses shall be rendered by the Town Community Development Director with the right to appeal to the Planning and Zoning Commission and Town Council.

(D) Property development standards. (See §§ 150.164 through 150.184 for additional standards and exceptions.) (See Part 8. Additional Height and Area Regulations and Exceptions.)

(1) *Setbacks.*

Land Use	Minimum Yard Setbacks				Lot Coverage
	Front	Side	Side Street	Rear	
H/I	50 feet *	25 feet	50 feet *	25 feet	N/A

*From all streets, 50 feet which shall be maintained as open space, except that access drives may penetrate the open space and parking may cover 15% of the required setback area. The parking shall be screened from the street by a solid fence, wall or landscaping screen of three feet in height.

(2) *Area and bulk requirements.*

Minimum Site Area	Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Maximum Height
10 acres	N/A	200 feet	200 feet	60 feet *
*Additional building height allowances up to a maximum of 50 feet may be obtained with a Conditional Use Permit.				

(E) ~~Off-street-Parking.~~ The provisions of §§ 150.156 through 150.163 shall apply. The applicable provisions of Part 7. Parking; Loading and Unloading shall apply.

PASSED AND ADOPTED by the Mayor and Council of the Town of Florence, Arizona this 1st day of April 2013.


Tom J. Rankin, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa Garcia, Town Clerk

James E. Mannato, Town Attorney

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 10a.
MEETING DATE: March 18, 2013 DEPARTMENT: Fire Department STAFF PRESENTER: Mike Duran, Interim Fire Chief SUBJECT: Contract for Fire Station Design-Build Services		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Motion to approve award to CORE Construction Inc. of a contract for design-build services for the design and construction of Fire Station #2, located at 1905 North Hunt Highway.

BACKGROUND/DISCUSSION:

In October 2012, CORE Construction Inc. (“CORE”) was selected, based upon their qualifications, to provide design/build services for the proposed Town of Florence Fire Station #2. Since October 2012, the Town Manager, Fire Chief, Public Works Director and the Project Manager Jared Baxter have worked closely with CORE Construction Inc. to develop a budget and general scope of work for the proposed fire station.

At this time, the Town of Florence Fire Department proposes entering into a contract with CORE Construction Inc. to provide design-build services for the design and construction of Florence Fire Station #2.

The Contract

The contract with CORE Construction, Inc. calls for a guaranteed maximum price for this project of **\$2,820,000.00**. This means that the total cost for design and construction cannot exceed that amount, unless the Town and CORE agree to an increase, in the form of a signed change order.

The contract calls for CORE to commence work within 5 days of receiving a Notice to Proceed from the Town, or on the date of receiving permits, whichever is later. After work is commenced, CORE will have 245 calendar days to complete the project.

Because the delivery of this project is through design-build, CORE will begin to design the project at such time as it receives the Town’s Notice to Proceed. It is anticipated that CORE will apply for permits once it has reached 60% design completion.

Example: The Town gives CORE its Notice to Proceed on March 19, 2013. CORE then takes 60 days to reach 60% design completion, at which time it receives its first permits. CORE would then have 245 days, beginning May 18, 2013, to achieve substantial completion of the project on January 18, 2014.

CORE is required to provide performance and payment bonds in the full value of the contract. CORE is also required to carry appropriate levels of property, liability and workman's compensation insurance during performance of the contract.

CORE is required to indemnify the Town against claims arising from the performance of the contract.

The Project

The construction of Florence Fire Station #2 is to be accomplished through the design-build delivery method; therefore, the design of the fire station has not been completed at this time.

However, key design elements which shall be included in the construction of Fire Station #2 include:

- 10,500 square feet
- Building shall be constructed of CMU block as well as traditional framing and stucco
- Metal roof
- 3 apparatus bays
- Living quarters for two crews, with 8 dormitories and full service kitchen
- A Police field office
- Community multi-purpose / staff training room
- Fitness room

FINANCIAL IMPACT:

The financial impact of the contract will be **\$2,820,000.00** for the proposed services. This does not include funds already expended for site preparation, grading, off-site improvements, etc. The funds for this impact are currently allocated in Fire/EMS development impact fees budget, line item 509-506-501.

STAFF RECOMMENDATION:

The Florence Fire Department recommends approval of the contract with CORE Construction Inc. to perform design and construction of Fire Station #2.

ATTACHMENTS:

Proposed contract between CORE Construction Inc. and the Town of Florence for design-build construction services.



Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____ in the year
of 2013, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

Town of Florence
Attn: Charles A. Montoya, Town Manager
P.O. Box 2670
775 N. Main Street
Florence, AZ 85132

DESIGN-BUILDER:

(Name and address)

CORE Construction, Inc.
Attn: James K. Jacobs, CEO
3036 E. Greenway Road
Phoenix, AZ 85032

PROJECT:

*(Include Project name and location
as it will appear in the Contract
Documents)*

Town of Florence Fire Station FS02
1905 N. Hunt Highway
Florence, AZ 85132

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1 **Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2 **Contract Documents**

2.1 The Contract Documents are comprised of the following:

- .1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2009 Edition), as amended (the "General Conditions of Contract");
- .2** The GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein.
- .3** This Agreement, including all exhibits;
- .4** Written Supplementary Conditions, if any, to the General Conditions of Contract;
- .5** The General Conditions of Contract;
- .6** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3 **Interpretation and Intent**

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract unless they are separately defined in the applicable Contract Documents in which they appear, in which case those definitions shall be controlling.

3.4 If Owner's Project Criteria contain prescriptive/design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the prescriptive/design specifications and its compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such

inaccurate prescriptive/design specification(s). Notwithstanding the above, any adjustment to the Contract Price must be mutually agreed to by the parties pursuant to a written change order.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.6 In the event of an ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them, and as such, nothing shall be construed against or in favor of one party based on its being deemed the sole author.

Article 4 **Ownership of Work Product**

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service, however, upon Owner’s payment in full of the Contract Price, excluding any retainage and amounts attributable to liquidated damages and warranty claims, if any, Owner shall retain the ownership and property interests therein, subject to Design-Builder’s retention of any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner’s Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 herein.

4.3 Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, tender ownership of the Work Product to Owner to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.1 and 4.2 above, conditioned on the following:

.1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design – Builder.

4.4 Owner’s Limited License upon Design-Builder’s Default. If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder shall tender ownership of the Work Product to Owner to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.1 and 4.2 above.

Article 5 **Contract Time**

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) or the date of permit(s), whichever is later.

5.2 Substantial Completion and Final Completion

5.2.1 Design-Builder shall achieve Substantial Completion of the entire Work 245 calendar days from the Date of Commencement (“Scheduled Substantial Completion Date”).

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as set forth in the Project Schedule Exhibit to the GMP Amendment.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (“Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 **Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner One Thousand Dollars and No/100 Dollars (\$1,000.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

Article 6 **Contract Price**

6.1 Contract Price

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (“Contract Price”) equal to Design-Builder’s Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.1.2 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

6.2 Design-Builder’s Fee

6.2.1 Design-Builder’s Fee shall be:

Phase 1 Design Services Fifty-Seven Thousand Ninety-Five and No/100 Dollars (\$ 57,095.00), as adjusted in accordance with Section 6.2.2 below.

Phase 2 Design Services TBD Dollars (\$ TBD), as adjusted in accordance with Section 6.2.2 below.

6.2.2 Design-Builder’s Fee will be adjusted as follows for any changes in the Work:

.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a Fee of Five percent (5 %) of the additional Costs of the Work incurred for that Change Order.

.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

An amount equal to the sum of: Five percent (5 %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee).

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

.1 The General Conditions shall be a stipulated sum as defined in the GMP. General Conditions include, but is not limited to, the following types of costs incurred during the performance of the construction phase: payroll costs for the project manager; payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on or off the site; workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the Design Consultant or subcontractors; taxes on the Work for which the Design-Builder is liable. Certain limitations and exclusions are described in the General Conditions for the construction phase.

.2 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

.3 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

.4 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

.5 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

.6 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

.7 Costs of removal of debris and waste from the Site.

.8 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

- .9 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
- .10 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
- .11 Costs reimbursable under the Contingency under Section 6.7.1.2 herein.
- .12 Accounting and data processing costs related to the Work.
- .13 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.4 Allowance Items and Allowance Values

- .1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth at the GMP Proposal and are included within the GMP.
- .2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Item. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.
- .3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.
- .4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.
- .5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.5 Non-Reimbursable Costs The following shall be excluded from the Cost of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price (“GMP”)

6.6.1 GMP Established Upon Execution of this Agreement: \$2,820,000.00

6.6.2 Notwithstanding anything contained in this Article 6 to the contrary, Design-Builder and Owner understand and agree that Owner shall have no liability for the payment of any sums whatsoever in excess of the amount stated in section 6.6.1 above, unless such sums have been agreed to in a written change order signed by Design-Builder and Owner.

6.6.3 Savings

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder’s Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) shall be shared as follows:

(Choose one of the following:)

Fifteen percent (15 %) to Design-Builder and Eighty-five percent (85 %) to Owner.

6.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

Article 7 Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the last day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner’s receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder’s Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder’s Fee to be included in Design-Builder’s monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder’s Fee.

7.2 Retainage on Progress Payments

7.2.1 Owner will retain ten percent (10%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will retain five percent (5%) of each Application for Payment.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract; and (b) Owner shall have the right to withhold all amounts to which Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, unless such payments are subject to a dispute as to the amount due which has been memorialized in writing by the disputing party, and whether progress payments or final payment, shall bear interest commencing thirty (30) days after payment is due or until the dispute is resolved, whichever is later, at the rate of current Wall Street Journal Prime Rate until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of two (2) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of two (2) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit.

Article 8 **Termination for Convenience**

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 Overhead and profit in the amount of fifteen percent (15%) on the sum of items .1 and .2 above.

1.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

- .1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid one hundred percent (100%) of the remaining balance of the Phase 1 and Phase 2 Design Services Fee(s) and two percent (2%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid ten percent (10%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9 **Representatives of the Parties**

9.1 Owner's Representatives

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Charles A. Montoya
Florence Town Manager
P.O. Box 2670
Florence, AZ 85132
520-868-7558

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jared Baxter
Jared Design Group, LLC
3515 Stone Wall Cir.
Heber City, UT 84032
435-709-8234

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

CORE Construction, Inc.
James K. Jacobs, CEO
3036 E. Greenway Road
Phoenix, AZ 85032
602-494-0800

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

CORE Construction, Inc.
_____, Project Manager
3036 E. Greenway Road

Phoenix, AZ 85032
602-494-0800

Article 10 **Bonds and Insurance**

- 10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.
- 10.2 Bonds and Other Performance Security.** Within ten (10) days after execution of this Agreement, the Design-Builder shall provide to the Owner a Performance Bond and a Labor and Material Payment Bond, each in a form approved by and satisfactory to Owner, and each for 100% of the full Contract price as described in section 6.6.1 above.

All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "B+VI or better for the prior four quarters" by the A.M. Best Company and which is satisfactory to Owner.

Article 11 **Other Provisions**

- 11.1** Other provisions, if any, are as follows: *(Insert any additional provisions)*
- | | |
|-----------|--------------------------------------|
| Exhibit A | Design Proposal Letter dated 1-14-13 |
| Exhibit B | Insurance Requirements |
| Exhibit C | Surety Bonds |

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

Town of Florence

(Name of Owner)

(Signature)

(Printed Name)

DESIGN-BUILDER:

CORE Construction, Inc.

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

(Title)

Date: _____



Standard Form of General Conditions of Contract Between Owner and Design-Builder

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

Table of Contents

Article 1:	General
Article 2:	Design-Builder's Services and Responsibilities
Article 3:	Owner's Services and Responsibilities
Article 4:	Hazardous Conditions and Differing Site Conditions
Article 5:	Insurance and Bonds
Article 6:	Payment
Article 7:	Indemnification
Article 8:	Time
Article 9:	Changes to the Contract Price and Time
Article 10:	Contract Adjustments and Disputes
Article 11:	Stop Work and Termination for Cause
Article 12:	Electronic Data
Article 13:	Miscellaneous

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2009 Edition).

1.2.2 *Basis of Design Documents* are as follows: DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 of the General Conditions of Contract and the submission of all documents set forth in Section 6.7.2 of the General Conditions of Contract.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2009 Edition).

1.2.10 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

1.2.11 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.12 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work including, but not limited to, the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 (the "Acts"), Arizona Revised Statutes ("A.R.S.") 34-301 "Employment of Aliens on Public Works Prohibited", A.R.S. 34-302 "Residence Requirements for Employees", A.R.S. 41-4401 and A.R.S. 23-214(A) "Verification of Employment Eligibility" (together referred to as the "Design-Builder Immigration Warranty").

1.2.13 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements, prescriptive specifications, and LEED ® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.14 *Site* is the land or premises on which the Project is located.

1.2.15 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.16 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.17 *Substantial Completion* or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.18 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2 **Design-Builder's Services and Responsibilities**

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as

an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. The schedule required herein and any revisions thereto shall be included in and considered a part of the Contract Documents.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail

drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Time(s) shall be adjusted to allow Design-Builder to compensate for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents and who are approved by Owner, such approval not to be unreasonably withheld.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work. Design-Builder shall ensure that its contracts with all Subcontractors contain a provision or provisions which define and require compliance with the Legal Requirements as such are defined herein, and which require all Sub-contractors to include such provisions in their contracts with all Sub-Subcontractors.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner for a period of two years after Final Completion that the construction, including all materials and equipment furnished as part of the construction, shall

be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of two years from the date of Final Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable. This section 2.10.2 shall survive the expiration or termination of the Agreement for a period of two years.

2.10.3 The two year period referenced in Sections 2.10.1 and 2.10.2 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3 **Owner's Services and Responsibilities**

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which

Design-Builder is entitled to rely upon in performing the Work:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site, if any;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4 A legal description of the Site;
- .5 To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work, however, any failure by Owner's Representative to provide such notice shall not constitute a waiver by Owner of any rights or remedies it may have for such failure by Design-Builder nor shall it constitute an implied acceptance of any such errors, omissions or defects in the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government

charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4 **Hazardous Conditions and Differing Site Conditions**

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take such measures as are required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such measures shall include Owner retaining qualified independent experts, if necessary, to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment of the Contract Time(s) to the extent Design-Builder's time of performance has been adversely impacted by the presence of Hazardous Conditions.

4.1.5 Owner shall indemnify, defend and hold harmless Design-Builder from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, resulting from the presence, removal or remediation of Hazardous Conditions at the Site arising prior to or within 180 days after Final Completion.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i)

materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Design-Builder agrees that it has visited and inspected the Site for the presence of any unusual conditions which would differ materially from the conditions indicated in the Contract Documents or that which would be ordinarily encountered in the Work.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit B to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, with a minimum rating set forth in the Agreement and which are reasonably acceptable to Owner.

5.1.2 Design-Builder's liability insurance set forth in the Agreement above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.4 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief. Design-Builder's certificates of insurance shall indicate Owner as an "additional insured". The insurance provided by Design-Builder herein shall be primary and not in addition to any insurance applicable to the Work which is provided by Owner.

5.2 Owner's Liability Insurance

5.2.1 Owner shall procure and maintain from the Arizona Municipal Risk Retention Pool ("AMRRP") such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from AMRRP property insurance upon the entire Project to the full insurable value of the Project and all expenses incurred to replace or repair the insured property. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials at the Site. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with any necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6 **Payment**

6.1 Schedule of Values

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder agrees to continue the Work while Owner and Design-Builder make a reasonable attempt to resolve the dispute underlying Owner's failure to make payment pursuant to Article 10, section 10.2 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) business days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be required by the Certificate of Substantial Completion or the Contract Documents.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** consent of Design-Builder's surety to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any warranties required by the Contract Documents, and (iv) any terms of the Agreement or Contract Documents which expressly survive expiration or termination of the Agreement.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7 **Indemnification**

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification

7.3.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has or makes a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner.

Article 8 **Time**

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions,

conditions, events, or circumstances beyond its control and due to no fault of its own, the Contract Time(s) for performance may be reasonably extended by Change Order. By way of example, events that may entitle Design-Builder to an extension of the Contract Time(s) include changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall inform Owner's Representative prior to making any such changes and shall record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is

later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Arbitration

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11 **Stop Work and Termination for Cause**

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement

terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment, unless Owner has notified Design-Builder that it has a dispute as to the amount due and provided the reason therefore.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur subject to any limitations contained therein, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or

approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12 **Electronic Data**

12.1 Electronic Data. The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion of the Project data or other information contained in the electronic media.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13 Miscellaneous

13.1 Confidential Information

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is otherwise available in or considered

to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles. Jurisdiction and venue of any legal disputes between Design-Builder and Owner shall be vested in the Superior Court of the State of Arizona in and for the County of Pinal.

13.5 Severability

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings


13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

	TOWN OF FLORENCE COUNCIL ACTION FORM	<u>AGENDA ITEM</u> 10b.
MEETING DATE: April 1, 2013 DEPARTMENT: Administration/Legal STAFF PRESENTER: Town Attorney SUBJECT: Ordinance No. 594-13, Rescinding Ordinance No. 583-12; and declaring an emergency.		<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information Only <input type="checkbox"/> Public Hearing <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Regulatory <input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading <input checked="" type="checkbox"/> Emergency <input type="checkbox"/> Other

RECOMMENDED MOTION/ACTION:

Motion to adopt Ordinance No. 594-13 and declaring an emergency.

BACKGROUND/DISCUSSION:

On August 6, 2012, the Florence Town Council enacted Ordinance 583-12, pursuant to the powers granted it by the State of Arizona under Arizona Revised Statutes (“A.R.S.”) § 9-240(B)(21)(c). A.R.S. § 9-240(B)(21)(c) provides the Town with the authority to prohibit all establishments and places where any nauseous, offensive and unwholesome business may be carried on.

Although the Town has the statutory authority to define and abate nuisances and to prohibit nauseous, offensive and unwholesome businesses, after careful review and consideration, taking into account the Town’s overall legal, financial and environmental well-being, staff has recommended that the Council consider rescinding Ordinance 583-12.

The Town is currently engaged in litigation with the Arizona Department of Environmental Quality (ADEQ) regarding the issuance of a Temporary Aquifer Protection permit to Curis Resources (Arizona) Inc. (“Curis”), and has also authorized the acquisition of land belonging to Curis, in an effort to protect the environment and allow for the development of needed Town facilities.

At this time, staff believes that these efforts will serve the public’s interests without the risk of unnecessary costs and legal expenses relating to the enforcement of Ordinance 583-12.

FISCAL IMPACT

There is no fiscal impact directly associated with this Ordinance.

ALTERNATIVES:

Do not enact Ordinance 594-13.

RECOMMENDATION:

Town staff recommends that the Council enact Ordinance No. 594-13, thereby rescinding Ordinance 583-12 and deleting Chapter 98 from the Florence Town Code.

ATTACHMENTS:

Ordinance No. 594-13

ORDINANCE NO. 594-13

AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, RESCINDING ORDINANCE NO. 583-12 – NAUSEOUS, OFFENSIVE AND UNWHOLESOME BUSINESSES PROHIBITED, AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Florence enacted Ordinance No. 583-12 on August 12, 2012; and

WHEREAS, the Florence Town Council has reviewed the ordinance and has determined that it is in the Town’s best interest to rescind Ordinance No. 583-12.

NOW THEREFORE BE IT ORDAINED THAT:

1. The Mayor and Council of the Town of Florence, Arizona, hereby rescind Florence Ordinance No. 583-12 and declare it of no force and effect.
2. Title IX, Chapter 98 of the Code of the Town of Florence, Arizona, is hereby amended by deleting Chapter 98 – Nauseous, Offensive and Unwholesome Businesses, in its entirety, as follows:

~~CHAPTER 98: NAUSEOUS, OFFENSIVE AND UNWHOLESOME BUSINESSES~~

~~§ 98.00 — NAUSEOUS, OFFENSIVE AND UNWHOLESOME BUSINESSES PROHIBITED~~

~~§ 98.01 — DEFINITIONS~~

~~LARGE QUANTITIES~~ — As used herein, “~~large quantities~~” means more than 50 gallons used or stored within any 30-day period.

~~PERSON~~ — As used herein, “~~person~~” means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental agency, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

~~IN-SITU MINING~~ — As used herein, “~~in-situ mining~~” means any process which involves 1) the pumping of an acid solution into an ore body through injection wells, 2) the recovery of such solution through recovery wells which are adjacent to the injection wells, and 3) the processing of the recovered solution using solution extraction and electrowinning (“SX/EW”) technology, whether performed in proximity to the location of the injection and recovery wells or at another site.

~~AGRICULTURAL OPERATIONS~~ — As used herein, “~~agricultural operations~~” means all activities by the owner, lessee, agent, independent contractor and supplier conducted on any facility for the production of crops, livestock, poultry, livestock products or poultry products.

~~§ 98.02 NAUSEOUS, OFFENSIVE AND UNWHOLESOME BUSINESSES PROHIBITED~~

~~(A) It is unlawful to carry on any business within the limits of the Town of Florence and for two miles beyond the limits thereof which the Town Council of the Town of Florence has found to be a nauseous, offensive and unwholesome business.~~

~~(B) In-situ mining and other businesses which utilize large quantities of sulfuric acid are declared a nuisance and are hereby found to be nauseous, offensive and unwholesome businesses.~~

~~(C) Notwithstanding anything in this chapter to the contrary, this section shall not be applicable to agricultural operations.~~

~~§ 98.03 PENALTY~~

~~(A) Any person that engages in or carries on a business prohibited under section § 98.02 of this chapter is guilty of a class 1 misdemeanor.~~

~~(B) Every day that a person engages in or carries on a business prohibited under section § 98.02 of this chapter is chargeable as a separate violation.~~

~~BE IT FURTHER ORDAINED:~~

~~§ 98.04 EMERGENCY~~

~~(A) As the provisions of this Ordinance are necessary for the preservation of the public health, safety and welfare, an emergency is hereby declared to exist, and this Ordinance shall therefore take immediate effect upon its passage by the Council and approval by the Mayor.~~

BE IT FURTHER ORDAINED that an emergency is hereby declared to exist, and therefore this Ordinance shall be in full force and effect from the offer of its passage and approval by the Mayor and Council of the Town of Florence, Arizona.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Florence, Pinal County, Arizona, this 15th day of April, 2013.

Tom J. Rankin, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa Garcia, Town Clerk

James E Mannato, Town Attorney