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MARTIN & BONNETT, P.L.L.C.
ATTORNEYS AT LAW

TOWN OF CAVE CREEK


*Susan Martin
**Daniel L. Bonnett
Jennifer Kroll

Mark A. Bracken

September 18, 2013

Via Certified U.S. Mail or Hand Delivery

✓ Town of Cave Creek
c/o The Office of the Town Clerk
5785 E. Azure Hills Drive
Cave Creek, AZ 85331

Mr. Adam Trenk, individually and in his
official capacity as Councilman of the
Town of Cave Creek, Arizona
5829 E. Gunsight Road
Cave Creek, Az 85331

Mr. Charles Spitzer, individually and
in his official capacity as Councilman
of the Town of Cave Creek, Arizona
6836 E. Continental Mountain Drive
Cave Creek, AZ 85331

Mr. Mike Durkin, individually and in his
official capacity as Councilman of the
of the Town of Cave Creek, Arizona
7139 E. Continental Mountain Road
Cave Creek, AZ 85331

Mr. Reginald Monachino, individually and
in his official capacity as Councilman
of the Town of Cave Creek, Arizona
5450 E. Desert Creek Lane
Cave Creek, AZ 85327

Re: Usama Abujbarah

NOTICE OF CLAIM

Pursuant to Arizona Revised Statute § 12-821.01, notice is hereby given by and on behalf of Usama Abujbarah ("Claimant" or "Mr. Abujbarah") that he¹ has various claims against the Town of Cave Creek, Arizona (the "Town" or "Cave Creek") and the above-named individual members of the Town Council ("Individual Councilmembers") arising out of the Town and Individual Councilmember's breach of the implied covenant of good

¹Because many of the claims asserted herein are claims that affect Mr. Abujbarah's marital community, all claims are made on behalf of Mr. Abujbarah, personally, and his spouse, Juman Abujbarah, and their marital community.

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•ALSO ADMITTED IN NEW YORK •ALSO ADMITTED IN ILLINOIS & IOWA

faith and fair dealing, wrongful termination and violations of Claimant's federal and state constitutional rights under the Arizona Constitution and the United States Constitution.²

FACTUAL BASIS FOR CLAIMS

Mr. Abujbarah is and has been a resident of the Town of Cave Creek, and has been a faithful employee of the Town for the past seventeen (17) years, the last fourteen (14) of which have been as Town Manager. Mr. Abujbarah signed an Employment Agreement (the "Agreement") with the Town of Cave Creek on August 6, 2012 setting for the terms and conditions of his employment through August 5, 2014. The Agreement is a matter of public record and is incorporated herein by reference thereto, however, a copy is attached hereto as Exhibit "1." In addition, Mr. Abujbarah's terms of employment were governed by applicable provisions of the Town Code of the Town of Cave Creek ("Town Code") and Arizona statutory law. Relevant sections of the Town Code are attached hereto as Exhibit "2."

After faithfully and competently carrying out his duties and responsibilities as Town Manager as evidenced by the last performance evaluation Claimant received on February 21, 2012, the Individual Councilmembers voted on June 10, 2013 to terminate Mr. Abujbarah's written employment contract effective September 9, 2013 in violation of the Arizona Open Meetings Law ("AOML"), A.R.S. §38-431 *et seq.* A special action proceeding is presently pending in the Superior Court of Maricopa County, Arizona entitled, "*Usama Abujbarah, Plaintiff, v. Town of Cave Creek, et al. Defendants,*" Case No. CV 2013-011198 (the "Special Action"). The Special Action seeks injunctive and mandamus relief against the Town, the Individual Councilmembers and those additional councilmembers not named herein.³

A new Town Council was sworn in on June 3, 2013 at which time the Individual Councilmembers assumed office. At no time prior to the vote by the Individual Councilmembers on June 10, 2013 was Mr. Abujbarah given a new or supplemental performance evaluation nor was he given any direction or instruction from either the Town or the Town Council members which he refused or failed to perform in his

²Claimant is not required to serve a statutory notice of claim in order to pursue claims for monetary relief stemming from violations of any federally protected right. Reference is made to violations of constitutional rights protected by the United States Constitutional only because the constitutional rights protected by the Arizona Constitution as asserted herein overlap with Claimant's federally protected rights.

³All members of the Town Council were named as defendants in the Special Action in order to obtain the complete relief requested in that action. Claimant seeks monetary relief only against the Town and those councilmembers named herein as Individual Councilmembers.

capacity as Town Manager. Claimant was given no instruction by the Town nor any opportunity whatsoever by the Individual Councilmembers to work alongside them, to follow any new agenda or vision they might have or wish to establish for the Town or to identify or resolve any actual or perceived differences. Instead, the first order of business of the Individual Councilmembers was to remove all duties and responsibilities of Mr. Abujbarah as Town Manager and terminate his employment.

The intent of the Individual Councilmembers was made clear prior to the June 10, 2013 Town Council meeting. Following the election of Council members Trenk, Durkin, Monachino, and Spitzer but before they were sworn in as members of the Council, each of the Individual Councilmember appeared at the May 28, 2013 Special Council Meeting. At that time, Adam Trenk made a verbal and written request to the Mayor and Town Clerk to place an agenda item on the next regular meeting agenda of the Town Council to take place on June 3, 2013 with the intended purpose of removing Claimant from his position of Town Manager. Minutes of the May 28, 2013 Special Council Meeting and Mr. Trenk's written requests are public records within the custody and control of the Town Clerk, however; copies are attached hereto as Exhibits "3" and "4," respectively. Due to scheduling matters, Mr. Trenk's request was not placed on the June 3, 2013 Regular Council Meeting Agenda. Instead, a Special Council Meeting was set for June 10, 2013 with the item requested by Adam Trenk placed on the agenda as the sole item. At Claimant's request, the meeting was held as a public meeting.

Despite having just taken office, the Individual Councilmembers made it clear from the outset that they intended to terminate Claimant's employment as Town Manager. The Individual Councilmembers did so without performing any evaluation of Claimant's performance as Town Manager that would justify terminating Claimant's Agreement, provided no direction to Claimant as Town Manager of what each might expect of him as Town Manager, and gave Claimant no opportunity to perform his duties under their direction as members of the Cave Creek Council.

Instead, during the June 10, 2013 Special Council Meeting, Adam Trenk made statements and implied that he and the others Individual Councilmembers were voting to remove Claimant, in whole or in part, because he had made statements to one or more members of the press and had otherwise commented publicly on matters of public concern regarding the Town. In addition, statements were also made by Adam Trenk that he did not like the fact that Mr. Abujbarah had associated with and supported their political opponents. An audio recording was made of the June 10, 2013 Special Council Meeting (including the comments of the Individual Councilmembers) which is a public record. That recording is under the custody and control of the Town Clerk and is incorporated herein by reference. A copy of the minutes of the June 10, 2013 Special Council Meeting is attached as Exhibit "5."

In addition, prior to the June 10, 2013 Special Meeting, on June 9, 2013, Claimant met in person with Adam Trenk at approximately 10:00 am at the Elencanto Restaurant in Cave Creek. Also present was Ray Fontaine Cave Creek resident and a member of the Town's Planning Commission. During the course of this meeting, Adam Trenk demanded assurances from Mr. Abujbarah that Claimant would not speak to the press on any matter involving the Town. This included matters of public concern affecting the Town of Cave Creek and its residents. When Mr. Abujbarah refused to such a blanket prior restraint on his right of free speech, Adam Trenk told Mr. Abujbarah that he would take action to have him removed as Town Manager. Comments made by some of the Individual Councilmembers at the June 10, 2013 Special Council Meeting indicate that this information was shared among and between the Individual Councilmembers in advance of the meeting to further the purpose of removing Claimant as Town Manager.

During the June 10, 2013 Special Meeting, AdamTrenk made a motion ("Trenk Motion") by reading from a document that was prepared in advance of the meeting. A copy of what is believed to be that paper from which Adam Trenk read is attached hereto as Exhibit "6." The Trenk Motion was seconded by Individual Councilmember Durkin. The Trenk Motion was voted on without a single amendment offered or a point of order raised by any Individual Councilmember. The Trenk Motion carried by a vote of four (4) to three (3) despite its procedural defects with each of the Individual Councilmembers voting in favor of the Trenk Motion. Following passage of the Trenk Motion, Claimant was notified that his employment terminated, effective, September 9, 2013.

Following the June 10, 2013 Special Council Meeting, Adam Trenk, acting in both his individual and official capacity as a member of the Town Council, sent an email to John Hoeppner on June 11, 2013. In that email, Adam Trenk published false information about Claimant, including, but no limited to, deliberately disseminating inaccurate information to the public; concealing information about government activities from the public; deliberately engaging in the selective enforcement of ordinances so he could target certain individuals; placing items on consent agenda as a favor to a friend; deciding the location of public works projects without oversight or survey thereby costing the town millions; improperly amending public documents; soliciting signatures on petitions from friends "in an effort to create the aura of support for new policies" then calling a special council meeting jus to adopt these policies; soliciting public participation from friends; leaking incomplete information to the media in an effort to shape public opinion; and providing unsolicited disclosures of private information to the media about citizens. Mr. Trenk also stated in the email that Mr. Abujbarah had engaged in improper behavior that had cost the Town "millions" and hurt people and that Claimant had taken "these actions together with the toxic pen of his close friend" referring to Mr. Abujbarah's constitutionally protected speech with members of the media including the *Sonoran News*. A copy of the email is attached hereto as Exhibit "7."

LEGAL BASIS FOR CLAIM

Breach of Implied Covenant of Good Faith and Fair Dealing

The Agreement between Claimant and the Town is a contract of employment. Arizona provides that the implied covenant of good faith and fair dealing applies to all contracts including this Agreement since “a party may nevertheless breach its duty of good faith without actually breaching an express covenant of the contract.” *See Wells Fargo Bank v. Arizona Laborers, Teamsters, and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 38 P.2d 12 (Ariz. 2002); *Nelson v. Phoenix Resort Corp.*, 181 Ariz. 188, 197, 888 P.2d 1375, 1384 (App. 1994)(“every contract, including employment contracts, contains an implied-in-law covenant of good faith and fair dealing that requires ‘neither party do anything that will injure the right of the other to receive the benefits of their agreement.’”); *Price v. Town of Dewey-Humboldt*, 2012 WL 2415206, 3 (D.Ariz.,2012)(citing *Wagenseller v. Scottsdale Mem'l Hosp.*, 147 Ariz. 370, 385, 710 P.2d 1025, 1040 (1985) and recognizing that “every contract contains implied covenants of good faith and fair dealing, including at-will employment contracts”).

The Trenk Motion required that Mr. Abujbarah agree to serve in some undefined role and to carry out undefined duties and responsibilities not consist with the duties as Town Manager and did so with no evaluation of past performance. Furthermore, this was done as a condition of receiving the benefits to which Mr. Abujbarah was already entitled under the terms of his employment Agreement. *See for example* Exhibit “1” at Section 4.2. This is a clear breach of the contract itself as well as a breach of the implied covenant of good faith and fair dealing embodied in every written contract. As further example of the breach of the implied covenant of good faith and fair dealing, Adam Trenk published the following statement in his June 11, 2013 email to John Hoeppner. “[A]bsent any offer from Mr. Abujbarah to amend his contract in a way that he could be held accountable there was no way I could work with him to achieve the necessary objectives. I deliberately did not propose terms, because amending his contract (*sic*) would have to be a bilateral action.” This statement is false because the Agreement and Town Code not only gave the Town and the Individual Councilmembers the ability to conduct an annual performance evaluation of Claimant, it requires it.

The Town and Individual Councilmembers breached the implied covenant of good faith and fair dealing by acting precipitously to terminate Claimant without conducting a performance review as required by the terms of the Agreement and applicable provisions of the Town Code, refusing to explain to Mr. Abujbarah what was expected of him as Town Manager or establish standards or metrics against which his performance could be measured, failing to give Claimant a reasonable opportunity to demonstrate that he could meet performance standards and giving Claimant no opportunity to demonstrate that he

could work with the Individual Councilmembers and Town despite a demonstrated record of 14 years of doing just that as Town Manager.

The implied covenant of good faith and fair dealing prohibits a party from doing anything to prevent other parties to the contract from receiving the benefits and entitlements of the agreement. *Id.* Mr. Abujbarah was prepared to work with the new Council for the remainder of the term of his employment Agreement, take direction, be evaluated on his performance and be given an opportunity to address and actual or perceived deficiencies in performance. Due to the actions of the Town and Individual Councilmembers, however; Claimant was deprived of these and other benefits, terms and conditions of his contract of employment.

Defamation

As set forth above, Individual Councilmember, Adam Trenk, published false and misleading statements about or concerning Mr. Abujbarah that impugn Claimant's character and competence as Town Manager as well as falsely accuse him of dishonesty and being unprofessional. There were similar defamatory statements posted by Mr. Trenk on his Facebook page. Each of these statements is actionable and constitutes defamation, *per se*. The elements of a defamation claim are: (1) defendant made a false defamatory statement about plaintiff, (2) defendant published the statement to a third party, and (3) defendant knew the statement was false, acted in reckless disregard of whether the statement was true or false, or negligently failed to ascertain the truth or falsity of the statement. *Farrell v. Hitchin' Post Trailer Ranch*, 2011 WL 6057930, 2 (Ariz.App. Div. 1 2011)(citing *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 315, 560 P.2d 1216, 1222 (1977)). Furthermore, since these statements injure Claimant in his chosen profession as a town or city manager, damages are presumed. "A plaintiff may prove defamation *per se* by showing that the statements fell into at least one category of statements presumed to cause damage, and therefore need not offer evidence of actual damage Two such categories that might be relevant to this case are statements that injure a person in his or her profession, trade, or business, and statements accusing a person of a crime involving moral turpitude." *Allen v. Arizona Dept. of Corrections*, 2009 WL 2382026, 6, n. 7 (Ariz.App. Div. 1 2009)(citing *Boswell v. Phoenix Newspapers, Inc.*, 152 Ariz. 1, 3 n. 1, 730 P.2d 178, 180 n. 1 (App.1985)).

Mr. Abujbarah reserves the right to further supplement the Notice of Claim with additional facts that support his defamation claim as he discovers additional information.

Violation of Constitutional Rights of Free Speech and Right to Petition

The Town and the Individual Councilmembers, acting under the color of law, deprived Claimant of his constitutional rights of free speech, association and to petition the government for redress of grievances. Under both the United States and Arizona Constitutions, a citizen has the right to engage in free expression, association and to petition the government for redress of grievances. *See* U.S. Const. amend I; Ariz. Const. art. 2, §§ 5 & 6. The right to petition the government for redress of grievances includes the right to file lawsuits such as the Special Action proceeding. *See Franco v. Kelly*, 854 F.2d 584, 589 (2nd Cir. 1988); *City of Tucson v. Grezaffi*, 200 Ariz. 130, 136, 23 P.3d 675, 681 (App. 2001)(right to associate includes right to do so for the purpose of engaging in First Amendment activities including speech); *Arizona Libertarian Party v. Schmerl*, 200 Ariz. 486, 491, 28 P.3d 948, 953 (App. 2001)(recognizing the constitutional right to associate with others to further common political beliefs and including participation in partisan politics).

Speaking as a private citizen and as a resident concerned with the composition and competence of his local government, Mr. Abujbarah made several statements to the press discussing his personal beliefs about municipal projects and certain political candidates. Mr. Abujbarah was not paid by the Town to make these statements. The manner in which the Town allocates funding for municipal projects and the election of political leaders are undoubtedly significant matters of public concern. "Speech involves a matter of public concern when it fairly can be said to relate to any matter of political, social, or other concern to the community." *Anthoine v. N. Cent. Counties Consortium*, 605 F.3d 740, 748 (9th Cir. 2010)(citing *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009)). Moreover, these statements were not made pursuant to Claimant's official capacity as Town Manager, but instead were made while off-duty in conversations held as a private citizen with likeminded residents of the Town and/or member(s) of the media, and are protected speech. Despite the protected nature of these statements, the Individual Councilmembers referenced them during the June 10, 2013 Special Council Meeting. "The First Amendment shields a public employee if he speaks as a citizen on a matter of public concern." *Huppert v. City of Pittsburg*, 574 F.3d 696, 702 (9th Cir. 2009). Claimant's protected speech was a substantial or motivating factor leading to his termination.

Also, in a June 25, 2013 letter sent to Claimant's counsel on behalf of the Town, an attempt was made to discourage and, accordingly, interfere with Mr. Abujbarah's right to even file a notice of claim stating that any such attempt by Claimant would be viewed as an anticipatory breach of his employment Agreement. In fact, the letter even stated that the Town may take steps to rescind or not honor Mr. Abujbarah's severance package unless he signed a full and complete release of all claims in favor of the Town including, presumably, forgoing his right to file the Special Action proceeding. The letter also

stated that any Notice of Claim would trigger this rescission. The June 25, 2013 letter also contained an implied threat of counterclaims. The letter is attached hereto as Exhibit "8."

This Notice of Claim is mandated by Arizona law, Ariz. Rev. Stat. § 12-821.01 if Mr. Abujbarah wants to preserve his right to pursue his state law claims even if he later decides not to do so. It is also embodied within the remedies available to Mr. Abujbarah under the terms of the Agreement. (See for example Exhibit "1" at Section 9.) With the exception of his federal claims, Mr. Abujbarah cannot pursue claims against the Town or the Individual Councilmembers (in their official capacities) for monetary damages based on state law without first timely serving them with this Notice. Serving the Notice, however, does not obligate either the Town or the Individual Councilmembers to approve it and pay the amount demanded. Likewise, it does not obligate Mr. Abujbarah to file a lawsuit. He cannot assert state law claims for monetary damages, however, without first timely serving this Notice as required by statute. Accordingly, the mere act of serving the notice is the first step in petitioning the Town to redress his grievances (i.e. alleged violations of state law giving rise to monetary damages).

Since Arizona law requires Claimant to file a Notice of Claim to pursue certain claims against the Town and the Individual Councilmembers, the threat of rescinding his contractually guaranteed severance package and instituting counterclaims against his for doing that which he is required by statute interferes with Claimant's right to petition the government for redress of his grievances chilling Claimant's constitutional rights. *See Lytle v. Wondrash*, 182 F.3d 1083 (9th Cir. 1999)(recognizing constitutional right of access to the courts and actionable claim under 42 U.S.C. §1983 for deliberate retaliation for exercising that right).

Wrongful Termination in Violation of Public Policy

The Town and the Individual Councilmembers were responsible for the Claimant's termination from his employment as Town Manager at the Town of Cave Creek in violation of public policy. *See* A.R.S. § 23-1501, *et seq.* The Town and Individual Councilmembers terminated the Claimant because he was associated with likeminded individuals who are or were political opponents of the Individual Councilmembers including, but not limited to, those individuals who were candidates or supporters of candidates for seats on the Cave Creek Town Council. In addition, the Town, acting through the Individual Councilmembers, terminated the Claimant because he spoke to members of the media on matters of public concern affecting the Town and its residents. Accordingly, the actions of the Town and the Individual Councilmembers actions violated the Claimant's rights under the First Amendment to the United States Constitution and Article 2, Sections 5 and 6 of the Arizona Constitution. Finally, Mr. Abujbarah has petitioned his government to redress grievances by commencing the

Special Action proceeding because of violations of the AMOL by the Town and the Town Council regarding the June 10, 2013 Special Council Meeting and the Trenk Motion. To the extent Claimant suffers economic injury by virtue of his constitutional right to petition his government to redress grievances, he may amend or further supplement this notice of claim.

AMOUNT OF CLAIM

The Town of Cave Creek and the Individual Councilmembers have violated Mr. Abujbarah's constitutional right, have breached the implied covenant of good faith and fair dealing embodied in every written contract and have wrongfully terminated him in violation of public policy. Consequently, Claimant asserts that he is entitled to, among other things, all money due under the terms of this Employment Agreement, non-economic damages such as emotional distress and mental anguish and attorneys' fees. Furthermore, with regard to violations of Claimant's constitutional rights committed by any Individual Councilmember acting in his individual capacity, Claimant is entitled to punitive or exemplary damages.

By virtue of the foregoing, Claimant asserts that he has a valid claim for monetary relief in the amount of no less than \$2,963,717.61 as set forth in the attached Schedule of Damages attached hereto as Exhibit "9."

OFFER OF SETTLEMENT AND COMPROMISE OF CLAIM

Claimant hereby offers to settle and compromise his claim on the following terms and conditions:

1. Reinstatement to the position of Town Manager with restitution of all duties and responsibilities, payment of back pay and restoration of benefits and payment of Claimant's attorneys' fees and costs to date in the amount of \$16,808.25.
2. Alternatively, in lieu of reinstatement on the terms set forth in item #1 above, payment of the lump sum of \$2,963,717.61.

Upon confirmation of the foregoing, Claimant will accept the above as full and complete satisfaction of his claim and will execute any such release or covenant not to sue as may be required.

The undersigned states, under penalty of perjury, that the above amounts are justly due and owing.

Notice of Claim: Usama Abujbarah
September 18, 2013
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Dated September 16, 2013


Usama Abujbarah

Dated September 16, 2013


Attorney for Claimant

Please reply to:
Daniel L. Bonnett
Attorney for Claimant
Martin & Bonnett, P.L.L.C.
1850 N. Central Ave., Suite 2010
Phoenix, AZ 85004

EXHIBIT 1

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), is made and entered into effective as of the 6th day of August, 2012 ("Effective Date"), by and between the TOWN OF CAVE CREEK, ARIZONA, an Arizona municipal corporation ("Employer" or "Town"), and USAMA ABUJBARAH ("Town Manager" or "Employee").

RECITALS:

A. Employer is an Arizona municipal corporation and Employee is the current Town Manager of Town. Employee is a member of the International City/County Management Association ("ICMA") and is subject to the ICMA Code of Ethics.

B. Employer desires to continue to employ Employee as, and Employee desires to accept continued employment as, Town Manager of the Town of Cave Creek, Arizona, upon the terms and conditions set forth in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Employer and Employee (collectively, the "Parties;" each a "Party") agree as follows:

1. Employment. Employer hereby employs Employee as Town Manager and Employee hereby accepts such employment from Employer upon the terms and conditions set forth below.

2. Services and Duties.

2.1 Employee's duties as Town Manager shall consist of those duties and obligations imposed upon the Town Manager by the Town Code, ordinances and regulations of Employer and those other duties and responsibilities delegated or assigned by the Town Council, from time to time, to Employee. Without limiting the foregoing, Employee's duties shall include the performance of all acts necessary and proper to attain the Town's policy objectives as established from time to time by the Town Council within the time limitations, if any, specified by the Town Council and within the constraints imposed by the Town's annual operating budget, capital budget, and periodic appropriations.

2.2 Employee shall faithfully, completely and accurately carry out and perform his duties in accordance with the highest professional and ethical standards of his profession and shall comply with all ordinances, rules, policies and regulations established or adopted by Employer from time to time.

2.3 Employee shall retain his membership in the ICMA for the term of this Agreement, and shall at all times govern himself in accordance with the ICMA Code of Ethics.

2.4 Hours of Work. It is recognized by the Parties that the duties of Town Manager require work outside of normal office hours and Employee agrees to devote the amount of time and energy necessary to carry out those duties with the highest degree of professionalism possible.

2.5 Outside Activities. Employee shall not engage in any non-Town connected business activity during the normal business hours of Town, except while on vacation, without the prior written approval of the Town's Mayor or direction of the Town Council. Employer agrees that occasional teaching, writing, or consulting work may be performed by Employee on Employee's time off, provided that such non-Town connected activities do not interfere with Employee's ability to faithfully, promptly and to the best of Employee's ability, experience and talent, perform all of his obligations under this Agreement, express or implied, to the satisfaction of Employer, in its reasonable discretion; and, provided further, that (i) no such activity shall involve a project, development or other activity which requires, or is likely to require at any time, review or approval by the Town Council or by any officer, agency, board or commission of the Town; and (ii) no such activity shall create a conflict of interest with the Town or create or give rise to a reasonable perception of such a conflict.

2.3 Other Terms and Conditions of Employment. Employer shall have the right to fix such other terms and conditions of employment relating to the performance of Employee as Employer may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Code or any other applicable law.

3. Term; Termination. The term of this Agreement shall be for a period commencing on the Effective Date, and ending on the 5th day of August, 2014, subject to early termination or extension pursuant to the provisions in this Section 3 (the "Term"). As used herein, the term "Termination Date" means the date on which Employee's employment by Employer terminates under any provision of this Section 3.

3.1 Early Termination by Employer.

(a) Employee is employed at the will of Employer and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate Employee and this Agreement at any time, without cause, by delivery of written notice of such termination to Employee not less than ninety (90) days in advance of the Termination Date set forth in the notice, unless the Parties otherwise agree.

(b) In the event Employee is terminated pursuant to this Section 3.1 (i) Employer shall pay to Employee, in full and complete payment of all compensation due to Employee under this Agreement, (a) Employee's regular pay and benefits through the Termination Date, paid on the regular paydays of Employer, plus (b) an amount equivalent to five (5) months of Base Salary (as defined below) as severance pay, paid as a lump sum and conditioned upon Employee's execution of a release as provided below; plus (c) payment for all accrued vacation and one third (1/3) of Employee's accrued sick leave not used at the Termination Date.

(c) Contemporaneously with the delivery of the severance payment provided for in Section 3.1(b) of this Agreement, and as a condition to Employee's receipt of such severance payment,

(d) Employee agrees to execute and deliver to Employer a release (provided by Employer and in form and content acceptable to Employer), effective as of the Termination Date, releasing Town, its Town Council, officers, employees and agents of all claims that Employee may have against Town, its Town Council, officers, employees and agents, including, without limitation, claims arising out of alleged intentional acts or other misconduct committed by Town Council members and claims arising under Arizona or Federal law pertaining to equal employment opportunity, age discrimination, and discrimination on basis of disability. To the extent permitted by law, Employee hereby grants and delivers such release to the Town.

3.2 Early Termination by Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer by delivery of written notice of such termination to Employer not less than ninety (90) days in advance of the Termination Date set forth in the notice, unless the parties otherwise agree in writing. If this Agreement is terminated pursuant to this Section 3.2, Employer shall pay to Employee, in full and complete payment of compensation due to Employee under this Agreement, Employee's regular pay and benefits through the Termination Date, on the regular paydays of Employer, and any accrued and unpaid expense reimbursement earned and attributable to any period prior to the Termination Date; provided, however, that notwithstanding any purported early termination by Employee, Employer may terminate Employee for cause at any time prior to the Termination Date specified by Employee, in which case Employee shall be entitled only to the compensation specified in Section 3.1 of this Agreement.

3.3 Early Termination Due to Death or Incapacity. This Agreement shall terminate upon the occurrence of the following events: (i) Employee's death occurring any time during the Term, in which event the Termination Date shall be Employee's date of death; or (ii) the permanent disability of Employee occurring at any time during the Term. For purposes of the foregoing, Employee shall be deemed to be permanently disabled if, by reason of any physical or mental condition, Employee is unable, in the judgment of the Town Council, to perform the essential functions of his duties under this Agreement, with or without reasonable accommodations. In the event this Agreement shall terminate pursuant to the provisions of this Section 3.3, Employer shall pay to Employee (or to Employee's estate or legal representative) in full and complete payment of all compensation due to Employee under this Agreement, the pro rata portion of any unpaid Base Salary through the Termination Date, any accrued and unpaid expense reimbursement and accrued vacation, and one third (1/3) of Employee's accrued sick leave not used prior to the Termination Date.

3.4 Extension of Term. The Town Council elected and sworn in at its first meeting in June, 2011 or any time thereafter may ratify this agreement and shall retain the authority to alter or change any of the provisions thereto.

3.5 Suspension. Employer may suspend Employee with or without full pay and benefits at any time during the Term, if, but only if, such suspension is permitted by law and:

a. Employer and Employee agree; or

b. A majority of the Town Council in attendance at a public meeting of the Council called to consider the issue or, at Employer's option, an executive session of the Town Council if permitted by law, vote to suspend Employee for just cause; provided that Employee shall have been given written notice setting forth the basis for any such prospective suspension at least ten (10) days prior to such hearing.

4. Compensation. For all services to be rendered by Employee under this Agreement, Employer will pay or cause to be paid or delivered to Employee only the following compensation and benefits:

4.1 Salary. Employer agrees to pay Employee an annual salary of \$112,500.00 (the "Base Salary"), payable in equal installments at the same time as other employees of the Employer are paid. Employer may (but is not obligated to) increase the Base Salary and/or other benefits of Employee in such amounts and to such extent as Employer may determine, from time to time, in its sole discretion, to be desirable on the basis of periodic performance reviews of Employee. Employee's annual salary shall be increased by the exact amount of any cost of living adjustment approved by Employer so long as said adjustment is applicable to all other Town employees.

4.2 Performance Review. Employer, prior to March 31st of each even numbered year, year shall review and evaluate the performance of Employee and shall conduct such a review and advise Employee of the results of that review in advance of any renewal of this Agreement. Employer's review and evaluation shall be in accordance with specific criteria developed by Employer, from time to time, in its sole discretion.

4.3 Automobile. Employee is required to be on call for twenty-four (24) hours service and must have access to a vehicle for Town business. Employer shall provide Employee with a suitable vehicle to which Employee shall have exclusive use for any and all Town business purposes. Employer shall be solely responsible for purchase, maintenance, insurance, taxes, fuel, and any other costs of operating or maintaining said vehicle, except for maintenance and repair expenses which are not covered by insurance and are caused by Employee's negligence, recklessness or intentional act or omission.

4.4 Personal Leave and Other Benefits.

4.4.1 Personal Leave. Employee shall be entitled to personal leave in accordance with Section 9.4 of the Town of Cave Creek Personnel Policy Manual, and in addition thereto on the 1st day of May, each year this Agreement is in effect, the Employee shall receive an additional twelve (12) days personal days (96 hours); provided, however, that Employee shall only take such personal days at such time or times that shall be approved in advance by the Mayor of Cave Creek and that shall not affect his duties under this Agreement or

the quality of services rendered pursuant to this Agreement. Employee shall accrue vacation in the same manner and at the same rate as other administrative employees of the Town.

4.4.2 Benefit Plans. Except as expressly provided herein, Employer will provide benefits to Employee in accordance with the Town's compensation and benefit plans as they now exist or are hereafter adopted or amended. Such benefits and compensation plans may, in the sole discretion of the Town, be changed or revoked at any time.

4.5 Insurance. Employee shall be provided full coverage for health insurance for Employee and family, to be paid in full by Employer, or at Employee's written request, Employer shall pay to Employee the amount that would otherwise be paid by both Employer and Employee so that Employee may secure his own health insurance (to meet Employee's needs). The Employer shall also provide to the Employee a term life insurance policy in the amount of \$100,000 during the course of employment.

4.6 Dues and Subscriptions. Employer agrees to budget and to pay a reasonable amount for the professional dues and subscriptions of Employee necessary for his continued full participation in any national, regional, state and local associations and organizations deemed necessary and desirable by Employer for the effective and professional performance of Employee's duties under this Agreement. Such organizations shall include, without limitation, the ICMA.

4.7 Expenses.

4.7.1. General Business Expenses. Employer will reimburse Employee upon submission of appropriate invoices, receipts, bills or other evidence of payment, for all ordinary and necessary business expenses directly incurred and paid by Employee in discharging his duties under this Agreement, if prior approval was given by Employer for such expenses.

4.7.2 Expenses for Professional Development. Employer agrees to budget for and to pay the travel and subsistence expenses of Employee for: (i) short courses and seminars deemed necessary or desirable by Employer for the effective and professional performance of Employee's duties under this Agreement, if prior approval was given by Employer for such expenses; (ii) professional and official travel expenses for meetings and other necessary functions for the benefit, or as representative, of the Town, including but not limited to, the annual conferences of the International City/County Management Association, the Arizona City Management Association, and such other national, regional, state and local governmental groups and committees on which Employee serves as a member, if prior approval was given by Employer for such expenses.

4.7.3 Records. Employee shall keep receipts and accurate records of all expenses and charges claimed to be reimbursable under this Agreement, which records shall be suitable in form and content both for Employer's records and for Internal Revenue Service purposes.

4.8 Tax Withholding. All amounts of Base Salary and other compensation, if any, payable to Employee under this Agreement shall be reduced by any amounts that Employer

is required to withhold with respect to such payments under the then applicable provision of any state, federal or local income or other tax laws, the so-called "FICA" laws, regulations or statutes of a like nature or any and all other state, federal or local laws of any kind or nature.

4.9 No Reduction of Benefits. Employer shall not at any time during the Term reduce the salary, compensation, or other financial benefits of Employee, except to the extent of a reduction across-the-board for all administrative employees of the Employer, which reduction Employer shall have the right to make, in its sole discretion, notwithstanding any provision in this Agreement to the contrary; provided, however, that in no event shall Employee's Base Salary be reduced during the Term.

5. Residency Requirement. During the Term, residency requirements shall be applied to and satisfied by Employee pursuant to the conditions stated in the Town Code, § 31.25 (A) (2).

6. Indemnification. In addition to any requirements imposed by state and/or local law, Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager, except to the extent caused by Employee's gross negligence, recklessness or intentional misconduct. Employer shall have the right to select and employ counsel to defend any such action and to compromise and settle any such claim or suit and shall pay (directly or through insurance) the amount of any settlement or judgment rendered with respect to such action.

7. Bonding. Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law, ordinance or Town Council requirement. Employee shall complete all necessary applications and otherwise cooperate with Employer in applying for and obtaining such bond.

8. Return of Property. On the Termination Date, regardless of how or why this Agreement is terminated, or whenever otherwise reasonably requested by Employer, Employee shall immediately return to Employer any or all of Employer's property, tangible or intangible, real, personal or mixed, including, but not limited to, any such property that is in Employee's possession or under his control or which is used, produced or created by Employee in rendering services under this Agreement or otherwise, all of which Employee hereby acknowledges and agrees is and shall be the property of Employer.

9. Remedies. Except as expressly provided herein, the event of a breach of this Agreement by either party, the non-breaching party shall have all rights and remedies available at law, in equity or under the terms of this Agreement; provided, however, that in no event shall Employee have any right to punitive, exemplary consequential or multiple damages against Employer, except for treble damages which may be available to Employee under A.R.S. § 23-355 relating to the failure to pay wages when due.

10. General Provisions.

10.1 Employer Policies. To the extent not inconsistent with the Agreement, Employee acknowledges and agrees that he is bound by all of the Employer's employment policies applying generally to employees, as they may be adopted and/or modified by Employer from time to time in its sole discretion. In the event of an inconsistency between the Employer's employment policies applying generally to employees, and any provision of this Agreement, the terms of this Agreement shall control.

10.2 Binding Nature of Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns. Employee acknowledges that the services to be rendered by Employee pursuant to this Agreement are unique and personal. Accordingly, Employee may not assign or transfer any of his rights or obligations under this Agreement without the prior written consent of Employer (which consent may be withheld by Employer in its sole discretion) and any purported assignment of Employee's rights or obligations without such consent shall be void and of no force or effect. This Agreement is made for the sole benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns and the persons identified in the release provision of Section 3.1 of this Agreement. Except as expressly provided in this Agreement, no other person or entity is intended to or shall have any rights or benefits under this Agreement, whether as third party beneficiaries or otherwise.

10.2 Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supercedes all prior and contemporaneous agreements, understandings, inducements and conditions express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by both Parties.

10.3 Governing Law; Choice of Forum. This Agreement is executed, delivered and will be performed in the State of Arizona and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern its interpretation and enforcement. Any action brought to interpret or enforce any provisions of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa and each of the Parties irrevocably consents to jurisdiction and venue in such Court for such purposes.

10.4 Relationship Created. The relationship created by this Agreement shall be deemed and construed to be, and shall be, solely that of employer and employee and not of any other type or nature.

10.5 Attorneys' Fees. Should any proceeding or litigation be commenced between the Parties concerning the terms of this Agreement, or the rights and duties of the Parties under this Agreement, the prevailing Party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing Party's attorneys' fees, to be determined by the court, and not by the jury.

10.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, effective during the Term, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable, and this Agreement shall be reformed accordingly.

10.7 Further Assurances. Employee shall execute and deliver all other instruments and documents and shall take all other actions as Employer may reasonable request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions provided for in this Agreement.

10.8 Construction. This Agreement is intended to express the intent of both Parties, and irrespective of the identity of the Party or counsel who prepared this Agreement or any draft of this Agreement, no rule of strict construction shall be applied against any Party. All words used in this Agreement shall refer to the appropriate number or gender, regardless of the number or gender stated.

10.9 Indulgences Not Waivers. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such rights, remedies, powers or privileges with respect to any other occurrence.

10.10 Costs and Expenses. Each Party shall bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and all matters incident to this Agreement.

10.11 Headings. The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof.

10.12⁴ Recitals. The Recitals made and stated above are hereby incorporated by reference into, and made a part of, this Agreement.

10.13 Notice. Any notice, request, demand and other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when hand-delivered to the Party to whom it is addressed or upon the date noted upon the receipt for registered or certified mail, first class postage prepaid, return receipt requested, addressed as set forth below:

If to Town:

Town Council of Cave Creek
Attention: Mayor
37622 N. Cave Creek Road
Cave Creek, AZ 85331

With a copy to:

Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
Attention: Cave Creek Town Attorneys

If to Employee:

Usama Abujbarah
5785 E. Azure Hills Drive
Cave Creek AZ 85331

Any Party may alter the address or addresses to which communications or copies are to be sent to such Party by giving notice of such change of address in conformity with the provisions of this Section 10.13 for the giving of notice.

10.14 Prior Approvals. Unless otherwise required by law or expressly stated in this Agreement, in any case where the prior approval of Employer is required to authorize the incurrence of a job-related expense by Employee, the written approval of the Mayor of Cave Creek shall constitute approval by Employer.

10.15 Conflict of Interest. This Agreement is subject to, and may be terminated by Town in accordance with, the provisions of A.R.S. § 38-511.

...

...

...

At:

IN WITNESS WHEREOF, the Mayor, as duly authorized by the Town Council and on behalf of the Town, has signed and executed this Agreement and Employee has signed and executed this Agreement, both in duplicate as of the Effective Date.

TOWN COUNCIL OF CAVE CREEK, ARIZONA:

By: Vincent Francia
Vincent Francia, Mayor
Date: 08/08/12

TOWN MANAGER:

Usama Abuibrah
Usama Abuibrah
Date: 8/8/2012

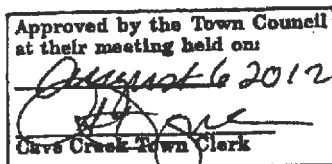
ATTEST:

Carrie A. Dyrek
Carrie A. Dyrek, Town Clerk

APPROVED AS TO FORM:

MARISCAL, WEEKS, MCINTYRE AND
FRIEDLANDER, P.A.,

By: Marie A. Pineda
Town Attorneys
#1



T: Town Clerk/Contracts/ Employment Agmt for Manager-2012.doc

EXHIBIT 2

TOWN OF CAVE CREEK, ARIZONA CODE OF ORDINANCES

Contains 2013 S-18 Supplement current through
Ordinance O2013-02, passed 5-20-13

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PUBLISHER'S ACKNOWLEDGEMENT

In the publication of this Code of Ordinances, every effort was made to provide easy access to local law by municipal officials, the citizens of this municipality, and members of the business community.

We want to express our grateful appreciation to all municipal officials for their untiring efforts in the preparation of this Code of Ordinances.

AMERICAN LEGAL PUBLISHING CORPORATION

Stephen G. Wolf, Esq.
President

Ordinance No. O2000-08

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA ENACTING A CODE OF ORDINANCES FOR THE TOWN OF CAVE CREEK, ARIZONA REVISING, AMENDING, RESTATING, CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE TOWN OF CAVE CREEK, ARIZONA DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES, AND DECLARING AN EMERGENCY

WHEREAS, the present general and permanent ordinances of the Town of Cave Creek, Arizona are inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of Arizona empower and authorize the Town of Cave Creek, Arizona to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the Legislative Authority of the Town of Cave Creek, Arizona has authorized a general compilation, revision and codification of the ordinances of the Town of Cave Creek, Arizona of a general and permanent nature and publication of such ordinance in book form; and

WHEREAS, it is necessary to provide for the usual daily operation of the municipality and for the immediate preservation of the public peace, health, safety and general welfare of the municipality that this ordinance take effect at an early date.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE AUTHORITY OF THE TOWN OF CAVE CREEK, ARIZONA:

Section 1. The general ordinances of the Town of Cave Creek, Arizona as revised, amended, restated, codified, and compiled in book form are hereby adopted as and shall constitute the "Code of Ordinances of the Town of Cave Creek, Arizona."

Section 2. Such Code of Ordinances as adopted in Section 1 shall consist of the following titles:

TOWN OF CAVE CREEK, ARIZONA

TABLE OF CONTENTS

Chapter

TITLE I: GENERAL PROVISIONS

- 10. General Provisions

TITLE III: ADMINISTRATION

- 30. Council
- 31. Officers
- 32. Police Department
- 33. Boards and Commissions
- 34. Magistrate Court
- 35. Elections
- 36. Policies
- 37. Revenue and Finance

TITLE V: PUBLIC WORKS

- 50. Sewers
- 51. Wastewater Regulations

TITLE VII: TRAFFIC CODE

- 70. General Provisions
- 71. Traffic Regulations
- 72. Parking Regulations
- 73. Traffic Schedules

TITLE IX: GENERAL REGULATIONS

- 90. Animals
- 91. Nuisances

- 92. Health and Sanitation
- 93. Streets, Sidewalks, and Waterways
- 94. Parks and Recreation

TITLE XI: BUSINESS REGULATIONS

- 110. Alcoholic Beverages
- 111. Peddlers and Solicitors
- 112. Adult Businesses
- 113. Cable Television

TITLE XIII: GENERAL OFFENSES

- 130. General Offenses

TITLE XV: LAND USAGE

- 150. Planning and Development
- 151. Building Regulations
- 152. Flood Damage Prevention
- 153. Subdivision of Land
- 154. Zoning

PARALLEL REFERENCES

References to 1987 Code of Ordinances

References to Arizona Revised Statutes

References to Ordinances

Section 3. All prior ordinances pertaining to the subjects treated in such Code of Ordinances shall be deemed repealed from and after the effective date of this ordinance except as they are included and reordained in whole or in part in such Code; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this ordinance, nor shall such repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall such repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code.

PASSED AND ADOPTED by the Mayor and the Town Council of the Town of Cave Creek, Arizona, this 24th day of July, 2000.

Vincent Francia /s/

VINCENT A. FRANCIA, Mayor

ATTEST:

Carrie A. Dyrek /s/

Carrie A. Dyrek, Town Clerk

APPROVED AS TO FORM:

Fredda Bisman /s/

Fredda Bisman, Town Attorney

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

Section

- 10.01 Title of code
- 10.02 Interpretation
- 10.03 Application to future ordinances
- 10.04 Captions
- 10.05 Definitions
- 10.06 Rules of interpretation
- 10.07 Severability
- 10.08 Reference to chapters and sections
- 10.09 Reference to offices
- 10.10 Errors and omissions
- 10.11 Official time
- 10.12 Reasonable time; calculation of time
- 10.13 Ordinances repealed
- 10.14 Ordinances unaffected
- 10.15 Effective date of ordinances
- 10.16 Repeal or modification of ordinances
- 10.17 Conflicting provisions

10.18 Ordinances which amend or supplement code

10.19 Section histories; statutory references

10.99 General penalty

§ 10.01 TITLE OF CODE.

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of the Town of Cave Creek, Arizona," and may be so cited. Such code may also be cited as "The Cave Creek Town Code."

('87 Code, Art. 1-1)

§ 10.02 INTERPRETATION.

(A) The rules and the definitions set forth in this chapter shall be observed in the construction of this code and the ordinances of the town unless such construction would be inconsistent with either the manifest intent of the Council or the context of this code or the ordinances of the town.

('87 Code, Art. 1-2)

(B) Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.* All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

('87 Code, § 1-3-1)

(B) *Definitions.* For the purpose of this code of ordinances, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A-WEIGHTED SOUND LEVEL. The sound pressure level in decibels, as measured on a sound level meter, using the a-weighting network in accordance with the sound level measurement criteria set forth in § 130.07(C). The level so read is designated as dBA.

CODE, THIS CODE, or THIS CODE OF ORDINANCES. This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNCIL. The Common Council of the Town of Cave Creek, Arizona.

('87 Code, § 1-3-4)

COUNTY. Maricopa County, Arizona.

DAY. The period of time between any midnight and the midnight following.

('87 Code, § 1-3-5)

DAYTIME. The period of time between sunrise and sunset.

('87 Code, § 1-3-6)

DECIBEL (dB). A unit for measuring the volume of a sound equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter), denoted as dB.

DEPARTMENT, BOARD, COMMISSION, OFFICE, OFFICER, or EMPLOYEE. Whenever any department, board, commission, office, officer, or employee is referred to, it shall mean a department, board, commission, office, officer, or employee of the town unless the context clearly indicates otherwise.

('87 Code, § 1-3-7)

EMERGENCY VEHICLE. Vehicles of the Fire, Police, and Public Service Departments and legally authorized ambulances and emergency vehicles of the State of Arizona, Maricopa County, or any political subdivisions thereof, and vehicles of public service corporations.

EMERGENCY WORK. Any work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency, which has or may result in a disruption of service, and which is necessary to protect the health, safety and welfare of persons or property.

EXCESSIVE NOISE. Any sound measured according to the criteria in § 130.07(C), which exceeds the levels set out in § 130.07(D). In the absence of specific maximum noise levels, a noise level is excessive if it exceeds the allowable noise level for the zoning district in which it is located.

IN THE TOWN or WITHIN THE TOWN. Means and includes all territory over which the town now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

('87 Code, § 1-3-9)

JOINT AUTHORITY. All words purporting to give a joint authority to three or more town officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.

('87 Code, § 1-3-10)

Leq. The constant level that over a given period transmits to the receiver the same amount of acoustic energy as the actual time-elapsed sound.

MAJORITY. When used in reference to the Town Council means 51% of those members in attendance provided that a quorum of the Council is also present.

('87 Code, § 1-3-11)

MONTH. A calendar month.

('87 Code, § 1-3-12)

MOTOR VEHICLE. Every self-propelled device in, upon, or by which any person or property is, or may be,

transported upon a public highway, excepting devices used exclusively upon stationary rails or tracks and aircraft.

MUFFLER. A device for abating the sound of escaping gases from an internal combustion engine.

NIGHTTIME. The period of time between sunset and sunrise.

('87 Code, § 1-3-6)

NOISE. The same meaning as "sound pressure level," as hereinafter defined.

OATH. Includes affirmation or declaration.

('87 Code, § 1-3-13)

OFFENSIVE NOISE. Any sound emitted across a property line within any residential or commercial development, and which exceeds the allowable noise level for the zoning district in which it is located.

PERSON. Shall extend and be applied to firms, corporations, or voluntary associations, as well as to individuals, unless plainly inapplicable.

('87 Code, § 1-3-15)

PERSONAL PROPERTY. Includes every species of property, except real property as defined in this section.

('87 Code, § 1-3-16)

PRECEDING or FOLLOWING. The words **PRECEDING** and **FOLLOWING** mean next before and next after, respectively.

('87 Code, § 1-3-17)

PROPERTY. Shall include real and personal property.

('87 Code, § 1-3-18)

REAL PROPERTY. Shall include lands, tenements, and hereditaments.

('87 Code, § 1-3-19)

SHALL or MAY. **SHALL** is mandatory and **MAY** is permissive.

('87 Code, § 1-3-20)

SHALL HAVE BEEN. Includes past and future cases.

('87 Code, § 1-3-21)

SIGNATURE or SUBSCRIPTION. Includes a mark when the signer cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his or her own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

('87 Code, § 1-3-22)

SITE-SPECIFIC SOURCE OF NOISE. A source of sound found on a specific site or parcel of land, which is confined to that site even though the specific source of the sound generation may be mobile on the site or parcel.

SOUND. Temporal and spatial oscillation in pressure, particle displacement, particle velocity, or other physical

parameter, in a medium with internal forces that causes progressively alternative compression and rarefaction of that medium, and which propagates at finite speed to distant points and can evoke an auditory sensation.

SOUND LEVEL METER. An instrument, including a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks, used to measure sound pressure levels.

SOUND PRESSURE. The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy.

SOUND PRESSURE LEVEL. Twenty times the logarithm to the base ten of the ratio of RMS sound pressure to the reference pressure of 20 micropascals (20×10^{-6} n/m). The **SOUND PRESSURE LEVEL** is denoted LP or SPL, and is expressed in decibels (dBA).

STATE. The State of Arizona.

('87 Code, § 1-3-23)

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

TENANT or OCCUPANT. When applied to a building or land shall include any person holding a written or an oral lease or who occupies the whole or part of such building or land, either alone or with others.

('87 Code, § 1-3-24)

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, except where otherwise provided.

('87 Code, § 1-3-31)

(Am. Ord. O-2005-02, passed 2-22-05; Am. Ord. O-2007-02, passed 3-19-07)

Statutory reference:

Definitions and construction of statutes generally, see A.R.S. §§ 1-211 through 1-215

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this municipality shall be by the following rules, unless such construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(A) *And/or.* "Or" may be read "and," and "and" may be read "or," if the context requires it.

('87 Code, § 1-3-14)

(B) *Acts by agents.* When this code or an ordinance requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

('87 Code, § 1-3-2)

(C) *Gender; singular and plural; tenses.* Words of the masculine gender include the feminine; words in the singular number include the plural, and words in the plural number include the singular. The present tense includes the past and future tenses, and the future includes the present.

('87 Code, §§ 1-3-8 and 1-3-25)

(D) *General terms.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.07 SEVERABILITY.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses, and phrases of this code shall be severable, and if any provision of this code is held unconstitutional for any reason by a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining provisions of the code.

('87 Code, Art. 1-7)

§ 10.08 REFERENCE TO CHAPTERS AND SECTIONS.

(A) All references to chapters or sections are to the chapters and sections of this code unless otherwise specified.

('87 Code, § 1-4-2)

(B) Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.09 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this municipality exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.10 ERRORS AND OMISSIONS.

If a manifest error is discovered consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state/federal laws, shall be the official time within this municipality for the transaction of all municipal business.

§ 10.12 REASONABLE TIME; CALCULATION OF TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.

(B) The time within which an act is to be done as provided in this code or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the

last day is a Saturday, Sunday, or holiday it shall be excluded; and when such time is expressed in hours, the whole of Saturday, Sunday, or a holiday, from midnight to midnight, shall be excluded.

('87 Code, § 1-3-26)

§ 10.13 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code, except as otherwise provided in § 10.14. However, all rights, duties and obligations created or imposed by the repealed ordinances shall continue and exist in all respects as if this code had not been adopted and enacted.

('87 Code, § 1-9-1)

§ 10.14 ORDINANCES UNAFFECTED.

The adoption and enactment of this code shall not be construed to repeal or in any way to modify or affect:

- (A) Any special ordinance or ordinances regarding franchises, annexations, dedications, or zoning.
- (B) Any ordinance making an appropriation.
- (C) Any ordinance affecting any bond issue or by which any bond issue may have been authorized.
- (D) The running of the statute of limitations in force at the time this code becomes effective.
- (E) The continued existence and operation of any department, agency, commission, or office heretofore legally established or held.
- (F) Any bond of any public officer.
- (G) Any taxes, fees, assessments, or other charges incurred or imposed.
- (H) Any ordinances authorizing, ratifying, confirming, approving, or accepting any compact or contract with any other municipality, the State of Arizona or any county or subdivision thereof, or with the United States or any agency or instrumentality thereof.
- (I) Ordinance 86-9-04 and any amendments of such ordinance.

('87 Code, § 1-9-2)

§ 10.15 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

§ 10.16 REPEAL OR MODIFICATION OF ORDINANCES.

When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause, or provision unless it shall be expressly so provided. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect nor any suit, prosecution, or proceeding pending at the time of the repeal for any offense committed under the ordinance repealed.

('87 Code, Art. 1-6)

§ 10.17 CONFLICTING PROVISIONS.

If any provision of this code conflicts with any other provision of this code, any other local legislation, or any state or federal law, the provision which is more stringent or restrictive in nature shall apply unless the context clearly requires or indicates otherwise.

('87 Code, §§ 1-4-3 and 1-4-4)

§ 10.18 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the legislative body shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

§ 10.19 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section. **Example:** (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. **Example:** (A.R.S. § 9-240) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85).

(2) If a statutory cite is set forth as a "statutory reference" following the text of the section, this indicates that the reader should refer to that statute for further information. **Example:**

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

For provisions concerning the inspection of public records, see A.R.S. § 39-121

(C) If a section of this code is derived from the previous code of ordinances of the town published in 1987 and subsequently amended, the 1987 code section number shall be indicated in the history by "('87 Code, § ____)."

§ 10.99 GENERAL PENALTY.

(A) Any person found responsible, pursuant to Chapter 31, § 31.28 of this code, for violating any provisions of this code, except as otherwise provided in this code, shall be responsible for a civil code infraction, and upon such finding of responsibility therefor may be punished by a civil sanction not to exceed \$500. Each day that a violation continues shall be a separate offense punishable as herein provided.

(1) In addition to any monetary civil sanction, the Civil Hearing Officer shall order the defendant to abate the civil code infraction, unless it has been abated by the date of a finding of responsibility therefor.

(2) The Civil Hearing Officer shall have the authority, within his or her discretion, to suspend the payment of any civil sanction imposed.

(3) In any case involving a civil code infraction relating to the occupancy or use of land, any monetary civil sanction imposed pursuant to this section upon a defendant who holds an ownership interest in such land shall be recordable as a lien upon such land and shall run with the land. The town, at its sole option, may record a notice of civil sanction and abatement order with the Maricopa County Recorder and thereby cause compliance by any person(s) or entity thereafter acquiring such property. When the property is brought into compliance by the owner or responsible party, a satisfaction of notice of civil sanction and abatement order shall be filed at the request and expense of the owner or responsible party. It shall be the property owner's responsibility to secure the satisfaction of notice of civil sanction and abatement order from the town.

(B) Any violation of or failure or refusal to do or perform any act required by Title VII of this code constitutes a civil traffic offense which shall result in a civil penalty not to exceed \$250. In addition, the court shall levy penalty assessments pursuant to A.R.S. §§ 12-116.01 and 12-116.02. Civil traffic violations are subject to the provisions of A.R.S. §§ 28-1592 et seq., as amended.

(C) Any person found guilty of violating any provision of this code which is classified as a Class 1 misdemeanor, upon conviction thereof, may be punished by a fine not to exceed \$2,500, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three years, or by any combination of such fine, imprisonment, and probation.

(D) Notwithstanding any other provision of this code, any person found to have violated any provision of this code or amendments thereto, which pursuant to this section is classified as a civil code infraction, and who has been twice previously found to have violated such provision within the preceding 24 months, shall, in addition to any penalty prescribed for such civil code infraction, be guilty of a Class 1 misdemeanor and shall be punished by a fine not to exceed \$2,500, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three years, or by any combination of such fine, imprisonment, and probation.

('87 Code, Art. 1-8) (Ord. O-2005-07, passed 6-20-05)

Statutory reference:

Maximum penalty for civil traffic violations, see A.R.S. § 28-1598

Misdemeanor penalty authorized, see A.R.S. § 9-240(28)(b)

Cross-reference:

Civil Hearing Officer, appointment of, see § 31.27

Civil code infractions, see § 31.28

TITLE III: ADMINISTRATION

Chapter

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31. TOWN OFFICERS

32. LAW ENFORCEMENT

33. BOARDS AND COMMISSIONS

34. MAGISTRATE COURT

- 35. ELECTIONS
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- 37. REVENUE AND FINANCE

CHAPTER 30: TOWN COUNCIL

Section

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- 30.02 Term of office
- 30.03 Powers
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- 30.05 Vacancies
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Cross-reference:

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TOWN COUNCIL

§ 30.01 COMPOSITION.

The elected officers of the town shall be a Mayor and six Council Members. The Mayor and Council Members shall constitute the Council and shall continue in office until the assumption of the duties of office by their duly elected successors.

('87 Code, § 2-1-1(A)) (Am. Ord. 89-09, passed 5-1-89; Am. Ord. 95-07, passed 6-12-95)

Statutory reference:

Town Council, see A.R.S. § 9-231

§ 30.02 TERM OF OFFICE.

Commencing with the primary or general election of 1997, the regular term of office for the Mayor and Council Members shall be two years or until their successors are elected and qualified.

('87 Code, § 2-1-1(B)) (Am. Ord. 89-09, passed 5-1-89; Am. Ord. 95-07, passed 6-12-95)

Statutory reference:

Term of office, see A.R.S. § 9-301

§ 30.03 POWERS.

The corporate powers of the town shall be vested in the Town Council and shall be exercised only as directed or

authorized by law. All powers of the Town Council shall be exercised by ordinance, resolution, order, or motion.

('87 Code, § 2-1-2)

§ 30.04 DUTIES.

Council Members shall assume the duties of office at the regularly scheduled Town Council meeting next following the date of the general election at which, or effective as of the date of which, the Council Members were elected.

('87 Code, § 2-1-3)

Statutory reference:

Qualifications of members, see A.R.S. § 9-232

§ 30.05 VACANCIES.

The Town Council shall fill by appointment for the unexpired term any vacancy that may occur for whatever reason.

('87 Code, § 2-1-4)

Statutory reference:

Vacancies, see A.R.S. § 9-235

§ 30.06 COMPENSATION.

The compensation of elective officers of the town shall be fixed from time to time by resolution of the Town Council, but such resolution shall be effective only after the election of a subsequent Town Council.

('87 Code, § 2-1-5)

Statutory reference:

Compensation, see A.R.S. § 9-232.01

§ 30.07 OATH OF OFFICE.

Immediately prior to assumption of the duties of office, each Council Member shall, in public, take and subscribe to the oath of office.

('87 Code, § 2-1-6)

Statutory reference:

Oath of office, see A.R.S. §§ 9-232 and 38-231

§ 30.08 BOND AND LIABILITY.

Prior to taking office, every Council Member shall execute and file an official bond, enforceable against the principal and his or her sureties, conditioned on the due and faithful performance of his or her official duties, payable to the state and to and for the use and benefit of the town or any person who may be injured or aggrieved by the wrongful act or

default of such officer in his or her official capacity. A person so injured or aggrieved may bring suit on such bond under provisions identical to those contained in A.R.S. § 38-260. Bonds shall be in such sum as shall be provided by resolution, and the premium for such bonds shall be paid by the town.

('87 Code, § 2-1-7)

Statutory reference:

Bond, see A.R.S. § 9-302

§ 30.09 FINANCIAL DISCLOSURE STATEMENT.

The Mayor and each Member of the Town Council shall file by January 31 of each year a financial disclosure statement on a form prescribed by the Clerk and with such information as provided by resolution of the Town Council and pursuant to state law.

('87 Code, § 2-1-8)

Statutory reference:

Financial disclosure statement, see A.R.S. § 38-545

MAYOR

§ 30.20 ELECTION.

Beginning with the election to be held on the second Tuesday in March in 1997, the Mayor of the town shall be directly elected by the qualified electors of the town.

('87 Code, § 2-2-1) (Am. Ord. 90-23, passed 7-2-90; Am. Ord. 95-07, passed 6-12-95; Am. Ord. 96-11, passed 9-3-96)

Statutory reference:

Direct election of Mayor, see A.R.S. § 9-232.03

§ 30.21 VICE MAYOR.

At the first regular meeting in June of each odd-numbered year, the Mayor and Members of the Town Council shall designate one of the Council Members as Vice Mayor. The Vice Mayor shall serve at the pleasure of the Town Council and shall perform the duties of the Mayor during the Mayor's absence or disability.

('87 Code, § 2-2-2) (Am. Ord. 95-07, passed 6-12-95)

Statutory reference:

Appointment of member to act in absence of Mayor, see A.R.S. § 9-236

§ 30.22 ACTING MAYOR.

In the absence or disability of both the Mayor and Vice Mayor, the Town Council may designate another of its members to serve as acting Mayor who shall have all the powers, duties, and responsibilities of the Mayor during such absence or disability.

('87 Code, § 2-2-3)

§ 30.23 POWERS AND DUTIES OF MAYOR.

(A) The powers and duties of the Mayor shall include the following:

(1) The Mayor shall be recognized as head of the town government for all ceremonial purposes and by the governor for purposes of martial law, but shall have no regular administrative duties.

(2) The Mayor shall be the Chairperson of the Town Council and preside over its meetings. He or she may make and second motions and shall have a voice and vote in all the Town Council's proceedings.

(3) The Mayor shall execute and authenticate by his or her signature such instruments as the Town Council or any statutes, ordinances, or this code shall require.

(4) The Mayor shall make such recommendations and suggestions to the Town Council as he or she may consider proper.

(5) The Mayor shall govern the town by proclamation during times of riot, civil insurrection, major disaster, and great public danger.

(B) The Mayor shall perform such other duties as are required by state statute and this code.

('87 Code, § 2-2-4) (Am. Ord. 88-06, passed 6-6-88; Am. Ord. 90-25, passed 7-2-90; Am. Ord. 96-16, passed 10-21-96)

Statutory reference:

Duties of Mayor, see A.R.S. § 9-236

§ 30.24 ABSENCE; VACANCY IN OFFICE.

The Mayor shall not be absent from the town for a period greater than 15 days without the consent of the Town Council. In case of the Mayor's death, resignation, or vacation of office for any reason, the Members of the Town Council will appoint a Member of the Town Council to serve the remainder of the Mayor's term and make an appointment to fill that individual's seat on the Town Council.

('87 Code, § 2-2-5) (Am. Ord. 95-07, passed 6-12-95)

§ 30.25 FAILURE TO SIGN DOCUMENTS.

If the Mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand, or other document or instrument requiring his or her signature for five days consecutively, then a majority of the Members of the Town Council may, at any regular or special meeting, authorize the Vice-Mayor or, in the Vice-Mayor's absence, an acting mayor to sign such ordinance, resolution, contract, warrant, demand, or other document or instrument, which when so signed shall have the same force and effect as if signed by the Mayor.

('87 Code, § 2-2-6)

PROCEDURE

§ 30.35 MEETINGS.

(A) *Regular meetings.* The Town Council shall hold regular meetings on the first and third Monday of each month at 7:00 p.m., provided that when the day fixed for any regular meeting of the Town Council falls upon a day designated by law as a legal holiday, the meeting shall be held at the same hour on the next succeeding day which is not a holiday. All regular meetings of the Town Council shall be held at the Town Hall.

('87 Code, § 2-4-1) (Am. Ord. 91-18, passed 7-9-91; Am. Ord. 97-12, passed 8-18-97; Am. Ord. 97-20, passed 11-17-97)

(B) *Special meetings.* The Mayor, or the Clerk upon the written request of four Members of the Town Council, may convene the Town Council at any time by notifying the Members of the date, hour, and purpose of such special meeting. Notice of such meeting shall be made pursuant to state law. In the case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

('87 Code, § 2-4-2)

Statutory reference:

Meetings, see A.R.S. § 9-233

§ 30.36 OPEN MEETING RULE.

All proceedings of the Town Council shall be open to the public, except that upon approval by a majority vote of the Town Council, the Town Council may meet in a closed executive session pursuant to the provisions of state law.

('87 Code, § 2-4-3)

Statutory reference:

Open meetings, see A.R.S. §§ 38-431 et seq.

§ 30.37 QUORUM.

A majority of the Council Members shall constitute a quorum for transacting business, but a lesser number may recess or adjourn from time to time and compel the attendance of absent members.

('87 Code, § 2-4-4)

Statutory reference:

Quorum, see A.R.S. § 9-233

§ 30.38 AGENDA.

(A) At least seven calendar days prior to each Town Council meeting, or as required by law, the Clerk, in consultation with the Mayor and Town Manager, shall collect all written reports, communications, ordinances, resolutions, contracts, and other documents to be submitted to the Town Council, prepare an agenda according to the order of business, post the agenda in the manner provided by law for such notice to the public, make a copy of the agenda and submission documents available for public inspection at the Town Hall, and provide a copy of the agenda and submission documents to each Council Member, the Mayor, and the Town Attorney. The agenda may include a consent agenda of one or more items.

(B) The Mayor, or the Town Clerk upon the written request of one member of the Town Council, may include an item on the agenda.

(C) To fully effect the intent of this section, all information required for submittal of the action item to the Town

Council shall be provided to the Town Clerk no less than seven days prior to the Town Council meeting at which the action item is to be considered.

(D) The Town Manager, with concurrence of the Mayor, may waive the agenda or submission deadline set forth in this section for routine administrative changes.

(E) The Mayor or, in the absence of the Mayor, the Vice-Mayor may waive the seven-day deadline set forth in division (A) above and amend the agenda less than seven days prior to a Council meeting, but more than the 24-hour period required for posting the agenda.

('87 Code, § 2-4-5) (Am. Ord. 96-03, passed 4-1-96; Am. Ord. O-2001-12, passed 12-3-01; Am. Ord. O2009-03, passed 4-6-09; Am. Ord. O2012-02, passed 3-19-12)

Statutory reference:

Power to regulate proceedings, see A.R.S. § 9-234

§ 30.39 ORDER OF BUSINESS.

(A) *Agenda.* The business of the Town Council shall be taken up for consideration and disposition in accordance with the agenda as established by the Mayor and Town Manager.

(B) *Consent calendar.* Matters on the consent calendar shall not require separate action but may be acted upon by adoption of the consent calendar. Any Council Member may request that a consent calendar item be removed from the consent calendar, in which case that item will not be acted upon by the adoption of the consent calendar.

(C) *Call to the public.* Unscheduled petitions, remonstrances, communications, and comments or suggestions from citizens present shall be heard by the Town Council. All such remarks shall be addressed to the Town Council as a whole, and to any Member thereof. Such remarks shall be limited to three minutes, unless additional time is granted by the Town Council. No question shall be asked of any Council Member except through the presiding officer. No Town Council action shall be taken on any "call to the public" items.

('87 Code, § 2-4-6) (Am. Ord. 89-14, passed 7-5-89; Am. Ord. 90-10, passed 7-2-90; Am. Ord. 91-12, passed 4-9-91; Am. Ord. O2012-02, passed 3-19-12)

§ 30.40 COMMITTEES AND COMMISSIONS.

The Town Council may create such boards, task forces, committees, and commissions, standing or special, as it deems necessary. They shall consist of as many members and shall perform such duties as the Town Council may require and shall exist at the pleasure of the Town Council.

('87 Code, § 2-4-7) (Am. Ord. 90-11, passed 7-2-90; Am. Ord. 90-30, passed 10-15-90; Am. Ord. 91-02, passed 3-4-91)

§ 30.41 VOTING.

(A) The Mayor shall vote as a member of the Town Council.

(B) Upon the request of any Member, the ayes and nays upon any question shall be taken and entered in the minutes.

(C) A roll call vote shall be taken on passage of any ordinance and on any item regarding any financial consideration.

('87 Code, § 2-4-8)

§ 30.42 SUSPENSION OF RULES.

Any of the provisions of the rules may be temporarily suspended in connection with any matter under consideration by a recorded vote of three-fourths of the Members present, except that this section shall not be construed to permit any action that is contrary to state statutes.

('87 Code, § 2-4-9) (Am. Ord. 90-12, passed 7-2-90)

ORDINANCES, RESOLUTIONS, AND CONTRACTS

§ 30.55 PRIOR REVIEW.

All ordinances, resolutions, and contract documents shall, before presentation to the Town Council, have been reviewed as to form by the Attorney and shall, when there are substantive matters of administration involved, be referred to the person who is charged with the administration of the matters. Such person shall have an opportunity to present his or her objections, if any, prior to the passage of the ordinance or resolution or acceptance of the contract.

('87 Code, § 2-5-1)

§ 30.56 INTRODUCTION.

(A) Ordinances, resolutions, and other matters or subjects requiring action by the Town Council may be introduced by a Member of the Town Council, Attorney, the Manager, or the Manager's designee.

(B) Ordinances shall be read on two different days, both readings will be by title only. For ordinances which require immediate passage, the Town Council may dispense with the rule by an affirmative vote of one-half plus one of the Members of the full Town Council.

('87 Code, § 2-5-2) (Am. Ord. 88-06, passed 6-6-88; Am. Ord. 96-29, passed 12-2-96; Am. Ord. O2012- 02, passed 3-19-12)

§ 30.57 EFFECTIVE DATES.

No ordinance or franchise shall become operative until 30 days after its passage by the Town Council and approval by the Mayor, except measures necessary for the immediate preservation of the peace, health, or safety of the town, but such an emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative and unless it is approved by the affirmative vote of three-fourths of all the Members of the Town Council, taken by ayes and nays.

('87 Code, § 2-5-4) (Am. Ord. 88-06, passed 6-6-88)

Statutory reference:

Emergency clause, see A.R.S. § 19-142(B)

§ 30.58 PUBLICATION.

Only such orders, resolutions, motions, regulations, or proceedings of the Town Council shall be published as may be required by state statutes or expressly ordered by the Town Council.

(`87 Code, § 2-5-6)

Statutory reference:

Publication, see A.R.S. §§ 9-811 et seq.

§ 30.59 ORDINANCE REQUIREMENTS.

(A) *Form and contents.* Each ordinance should have but one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this code or to an existing ordinance, and, in such case, the title of the sections to be amended shall be included in the ordinance.

(`87 Code, § 2-5-3)

(B) *Signature and attestation.* Every ordinance passed by the Town Council, before it becomes effective, shall be signed by the Mayor and attested by the Clerk.

(`87 Code, § 2-5-5)

(C) *Posting of ordinances imposing punishment.* Every ordinance imposing any penalty, fine, forfeiture, or other punishment shall, after passage, be posted by the Clerk in three or more public places as set by the Town Council within the town and an affidavit of the person who posted the ordinance shall be filed in the office of the Clerk as proof of posting.

(`87 Code, § 2-5-7)

Statutory reference:

Posting required, see A.R.S. § 9-813

SPECIAL PROCEEDINGS

§ 30.70 CONDEMNATION HEARINGS.

At least two public hearings shall be posted and held by the Town Council in the manner provided by law regarding the subject matter of any order, resolution, or ordinance which authorizes any condemnation proceeding by or on behalf of the town.

(Ord. 96-06, passed 5-20-96)

CHAPTER 31: TOWN OFFICERS

Section

General Provisions

- 31.01 Creation of offices
- 31.02 Additional offices
- 31.03 Bond
- 31.04 Oath

31.05 Vacancies; holding multiple offices

31.06 Powers and duties

Officers

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31.21 Marshal

31.22 Engineer

31.23 Attorney

31.24 Magistrate

31.25 Manager

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31.27 Civil Hearing Officer

31.28 Commencement of enforcement action on civil code infraction

Cross-reference:

Court Administrator, see § 34.56

Prosecutor, see § 34.55

GENERAL PROVISIONS

§ 31.01 CREATION OF OFFICES.

(A) There are hereby created the offices of Town Clerk, Town Marshal, and Town Engineer, who shall be appointed by the Manager and who shall serve at the pleasure of the Manager.

(B) There are hereby created the offices of Town Magistrate and Town Attorney, who shall be appointed by the Town Council. The Magistrate shall serve for a term of two years with the beginning and ending of the term to be specified at the time of appointment. During such term, a Magistrate may be removed only for cause. The Town Attorney shall serve at the pleasure of the Town Council.

('87 Code, § 3-1-1) (Am. Ord. 88-07, passed 6-6-88; Am. Ord. 90-17, passed 7-2-90)

Statutory reference:

Officers, see A.R.S. §§ 9-237, 9-303

§ 31.02 ADDITIONAL OFFICES.

The Town Council and Manager may create such other offices as they may deem necessary and that are not provided for in this code or state statute, and the Town Council and Manager may establish the duties of officers created in § 31.01.

('87 Code, § 3-1-3) (Am. Ord. 88-07, passed 6-6-88)

Statutory reference:

Additional offices, see A.R.S. § 9-239

§ 31.03 BOND.

The Town Council shall require each officer of the town to give bond for the due discharge of his or her duties in such sums and with such security as it may direct and approve as determined by resolution. The town shall pay the costs of such bond.

('87 Code, § 3-1-4)

Statutory reference:

Bond, see A.R.S. § 9-239

§ 31.04 OATH.

Each officer and employee of the town shall take and subscribe to the loyalty oath required pursuant to A.R.S. § 38-231.

('87 Code, § 3-1-5)

§ 31.05 VACANCIES; HOLDING MULTIPLE OFFICES.

Any vacancy that shall occur in any town office shall be filled by appointment by the Manager, provided that one person may hold more than one office and that at the discretion of the Manager the functions of a town official may be validly performed and discharged by a deputy or another town official, or an otherwise qualified individual not holding office but employed at the pleasure of the Manager.

('87 Code, § 3-1-6) (Am. Ord. 88-07, passed 6-6-88)

Statutory reference:

Vacancies, see A.R.S. § 9-239

§ 31.06 POWERS AND DUTIES.

In addition to any powers and duties prescribed in this code, each officer shall have such further powers, perform such further duties, and hold such other offices as may be provided by the Town Council through ordinance, resolution, or order and by direction of the Town Manager.

('87 Code, § 3-1-7) (Am. Ord. 88-07, passed 6-6-88)

OFFICERS

§ 31.20 CLERK.

(A) *Records.* The Clerk shall keep a true and correct record of all business transacted by the Town Council and any other records that either pertain to the business of the town or that the Town Council or Manager directs. The Clerk shall number, plainly label, and file separately in a suitable cabinet all resolutions, ordinances, notices, deeds, surveys, leases,

paid and unpaid vouchers, inventories, letters, orders, and other documents of whatever nature.

(B) *Public inspection of records.* The Clerk shall keep convenient for public inspection all public records and public documents under his or her control, as provided by state statute.

(C) *Monthly reports.* The Clerk shall prepare and collect from town officers and employees such monthly reports prepared in such manner and to include such information as may be directed by the Town Council.

(D) *Minutes.* The Clerk shall prepare or cause to be prepared all minutes of Town Council proceedings and ensure their correctness and accuracy.

(E) *Ordinances, resolutions, budgets, and notices.* The Clerk shall process, record, file, publish, and, if required by state statute, post all ordinances, resolutions, budgets, and notices that may be passed by the Town Council.

(F) *Duties as Treasurer.* The Clerk shall hold the office of Town Treasurer and receive and secure all monies that shall come to the town and pay out the same when authorized by the Town Council or Manager as authorized by the Town Council. He or she shall keep a separate record and account of each different fund provided by the Town Council, apportion the monies received among the different funds as prescribed by the Town Council, and keep a complete set of books showing every money transaction of the town, the state of each fund, from what source the money in each fund was derived and for what purpose expended. He or she shall make monthly reports to the Town Council of all receipts and disbursements and the balance in each fund.

(G) *Election official.* The Clerk shall be the town election official and perform those duties required by state statute.

(H) *Licenses.* The Clerk shall issue or cause to be issued all licenses that may be prescribed by state statute or this code.

(I) *Administrative duties.* The Clerk shall perform those administrative responsibilities and duties that are conferred upon him or her by the Town Council or Manager in addition to those specified in this code.

('87 Code, § 3-2-1) (Am. Ord. 88-07, passed 6-6-88)

Statutory reference:

Clerk, see A.R.S. §§ 9-237 and 9-238

§ 31.21 MARSHAL.

The Marshal shall be a law enforcement official and shall be collector of all taxes of the town, provided that the collection of such taxes may be administered by the Clerk. He or she shall perform such duties as may be required of him or her by law and as the Manager may deem necessary.

('87 Code, § 3-2-2) (Am. Ord. 88-07, passed 6-6-88; Am. Ord. O-2003-05, passed 8-18-03)

Cross-reference:

Marshal, powers and duties, see § 32.02

Statutory reference:

Marshal, see A.R.S. §§ 9-237 and 9-238

§ 31.22 ENGINEER.

The Engineer shall perform such duties as may be required of him or her by law and such other duties as the Manager

may deem necessary.

('87 Code, § 3-2-3) (Am. Ord. 88-07, passed 6-6-88)

Statutory reference:

Engineer, see A.R.S. §§ 9-237 and 9-238

§ 31.23 ATTORNEY.

The Attorney shall act as the legal counselor and advisor of the Town Council and Manager and other town officials and, as such, shall give his or her opinion in writing when requested. He or she shall draft all deeds, contracts, conveyances, ordinances, resolutions, and other legal instruments when required by the Town Council or Manager. He or she shall approve as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the Town Council. He or she shall return all ordinances and resolutions submitted to him or her for consideration by the Town Council, with his or her approval or disapproval as to form noted thereon, together with his or her reasons therefor. He or she shall prosecute and defend all suits, actions, or causes where the town is a party and shall report to the Town Council, when required, the condition of any suit or action to which the town is a party.

('87 Code, § 3-2-4) (Am. Ord. 88-07, passed 6-6-88)

§ 31.24 MAGISTRATE.

The Town Magistrate shall be the presiding officer of the Magistrate's Court and shall be selected by the Town Council and shall perform those functions necessary to the maintenance of the Magistrate's Court as provided by state statute.

('87 Code, § 3-2-5)

Cross-reference:

Magistrate Court, see Chapter 34

Statutory reference:

Magistrate, see A.R.S. § 22-403

§ 31.25 MANAGER.

(A) *Creation; residence.*

(1) The office of the Town Manager (hereinafter called "Manager") is hereby created. The Manager shall be appointed by a majority of the Town Council for an indefinite term. The Manager shall be chosen on the basis of his or her executive and administrative qualifications and his or her knowledge of accepted practice with respect to the duties of this office. The Manager shall hold office at the pleasure of the Town Council.

(2) At the time of appointment, the person appointed as Manager need not be a resident of the town or the state, but shall be required to reside within 15 miles of the town boundaries or a greater distance as authorized by Town Council, within six months of appointment.

(B) *Eligibility.* No Member of the Town Council shall be eligible to be appointed to the office of Manager during the term for which the Member shall have been elected or appointed.

(C) *Bond.* The Manager shall furnish a surety bond to be approved by the Town Council in such sum as may be determined by the Town Council, said bond to be conditioned upon the faithful performance of his or her duties as

described herein. The premium for such bond shall be paid by the town.

(D) *Compensation.* The Manager shall receive such compensation as the Town Council shall from time to time determine. In addition, the Manager shall be reimbursed for all actual and necessary expenses incurred by him or her in the performance of official duties, or incurred when traveling on business pertaining to the town under direction of the Town Council. Reimbursement shall only be made, however, when a verified, itemized claim has been approved and allowed according to established policy.

(E) *Acting Town Manager.*

(1) If the Manager is temporarily unable to perform his or her official duties, the powers and duties of the office shall devolve upon the Clerk. If the Clerk is unable to perform the duties, the Manager, or the Clerk if the Manager is unable, shall then designate an officer of the town to be acting Town Manager.

(2) If a vacancy in the office of Manager occurs, such as would be created by termination, resignation, or death, the Town Council may assign the powers and duties of the office to another person until the Manager is replaced.

(F) *Removal.* The Manager may be removed only by a majority vote of the Town Council at a regular or special Town Council meeting. In such event, the Manager shall be furnished with a written notice stating the Town Council's intention to remove him or her and the reasons therefor at least 30 days following notice of removal, providing such request is made within seven days from the date of notice of removal. During the interim, the Town Council may suspend the Manager from duty but shall continue his or her salary and, if the removal becomes final, shall pay his or her salary according to his or her employment contract. Should the manager not have a contract, then the severance pay shall be for a maximum of one month.

(G) *Resignation.* The Manager shall give in writing a 30-day notice of his or her intention to resign before leaving, resigning, or quitting the office of Town Manager.

(H) *Powers and duties.* The Manager shall be the chief administrative officer of the town and shall be responsible to the Town Council for the proper administration of all affairs of the town, ensuring that the town shall maintain the highest possible standards of public service. It shall be the Manager's duty to:

(1) Execute, on behalf of the Town Council, general administrative supervision and control of the affairs of the town.

(2) Attend all meetings of the Town Council, unless excused therefrom, and report on any matter concerning activities, departments, and services under his or her supervision about which, in his or her judgment, the Town Council should be informed; attend, or designate a representative to attend, all board and commission meetings.

(3) Appoint and, when necessary, suspend and remove all employees of the town. With regard to all officers and employees appointed by the Manager, neither the Town Council nor any of its Members shall direct or request the appointment of any person to, or his or her removal or suspension from, such office by the Manager or any of his or her subordinates, or in any manner take part in the appointment or removal of such officers and employees in the administrative services of the town.

(4) Coordinate administrative functions and operations of the various departments, boards, divisions, and services of the town government and, on its behalf, carry out policies, rules, regulations, ordinances, and provisions of the town code relating to the administration of the affairs of such departments, boards, divisions, or services.

(5) Analyze the functions, duties, and activities of the various departments, boards, and services of the town government and of all employees, and recommend to the Town Council any changes which, in his or her judgment, would result in a more efficient town government.

(6) Prepare and submit the proposed annual budget to the Town Council for its approval on dates specified by the Town Council.

(7) Supervise the expenditures of all departments, divisions, or services of the town government, ensuring that no expenditure is made in violation of the Arizona Constitution, the state budget law, and A.R.S. § 42-17106(A)(2) in particular.

(8) Acquire and keep a current inventory of all the personal property owned by the town and recommend to the Town Council the purchase of machinery, equipment, and supplies along with the means by which these should be obtained.

(9) Ensure that all laws and ordinances of the town are enforced, and recommend that the Town Council adopt such measures or ordinances as may contribute to the health, safety, or welfare of the community or improve administrative services.

(10) Investigate all complaints concerning the administration of the government and any contract and/or service maintained by the town, and report all findings to the Town Council, and see that all franchises, permits, and privileges granted by the town are faithfully observed.

(11) Perform such other duties as may be required by the Town Council not inconsistent with the laws of the state or the provisions of the ordinances of the town, and devote full time to the discharge of official duties.

(I) *Policy-making prohibited.* The Town Manager shall not exercise any policy-making or legislative functions nor attempt to commit or bind the Town Council to any action, plan, or program requiring the official action of the Town Council.

(J) *Orders and directions.* The Town Council shall deal with the administrative services of the town only through the Town Manager, except for the purpose of inquiry, and neither the Town Council nor any Members thereof shall give orders to any subordinates of the Town Manager.

(K) *Agreements on employment.* Nothing in this section shall be construed as a limitation on the power or authority of the Town Council to enter into any supplemental agreement with the Manager delineating additional terms and conditions of employment not inconsistent with any provisions of this subchapter or of state statutes.

('87 Code, § 3-2-6) (Am. Ord. 88-05, passed 6-6-88; Am. Ord. 90-18, passed 7-2-90; Am. Ord. 95-22, passed 12-4-95; Am. Ord. 2000-12, passed 1-8-00)

Statutory reference:

Manager, see A.R.S. § 9-303

§ 31.26 ZONING ADMINISTRATOR.

(A) *Creation.* The office of Zoning Administrator is hereby established for the administration of the zoning ordinances of the town. The Zoning Administrator shall perform such duties as set forth in this section or the zoning code of the town. The duties of the Zoning Administrator may be performed directly by the Town Clerk or by such staff as may be designated by the Manager specifically for the administration of the zoning code of the town. The Zoning Administrator shall perform his or her duties under the direction of the Manager.

(B) *Duties.* It shall be the duty of the Zoning Administrator to:

(1) Receive, process, record, and administer all requests for approvals and permits, as governed by the zoning code of the town.

(2) Advise and recommend to the Planning Commission, the Board of Adjustment, and the Town Council regarding requests for approvals and permits as required by the zoning code of the town.

(3) Direct such inspections, observations, and analyses of any and all erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the town relating to the regulations and restrictions as set forth by the zoning code of the town.

(4) Take such action as is necessary for the enforcement of the zoning code of the town relating to violations of the regulations and restrictions.

('87 Code, Art. 3-3) (Am. Ord. 88-07, passed 6-6-88)

§ 31.27 CIVIL HEARING OFFICER.

A Civil Hearing Officer shall be appointed by the Town Manager and may hear civil code infractions and make such orders as may be proper and necessary to dispose of such cases. Such cases shall be heard without a jury. The Civil Hearing Officer shall adopt such local rules of procedure as may be necessary to implement the hearing of civil code infraction cases.

(Ord. O-2004-21, passed 7-8-04)

§ 31.28 COMMENCEMENT OF ENFORCEMENT ACTION ON CIVIL CODE INFRACTION.

(A) **CIVIL CODE INFRACTION** means any violation of the town code of ordinances unless such violation is otherwise designated as a misdemeanor or as a civil traffic violation.

(B) An enforcement action on a civil code infraction shall be commenced by the filing of a complaint with the town Civil Hearing Officer, substantially in the form set forth in Appendix A, attached to Ord. O-2005-07, or on a Uniform Arizona Traffic Ticket and Complaint, as specified in the Arizona Rule of Procedure in civil traffic violation cases. The complaint form shall be in at least triplicate, in dimensions of approximately 8-1/2 inches by 11 inches, consisting of the original complaint, violator/defendant copy, and enforcement copy. The complaint form shall contain a notice of hearing specifying a location, date, and time at least ten days following issuance of the complaint, at which the defendant shall appear to admit or deny the allegations contained therein. The complaint shall specifically identify the defendant, the date and time of the alleged civil code infraction(s), the location of the alleged civil code infraction(s), and the civil code infraction(s) alleged by the town code or ordinance section number and description. The complaint shall be signed by the complainant, who shall certify, under penalty of perjury, that he/she has reasonable grounds to believe that the named defendant committed the civil code infractions described in the complaint and that a copy of the complaint has been served on the defendant pursuant to this section.

(C) The complaint and notice of hearing may be served upon the defendant and will be deemed proper and complete by any of the following means:

- (1) By having the defendant(s) sign the complaint with and acknowledgment of receipt of a copy thereof;
- (2) By hand delivery to the person or persons listed on the complaint;
- (3) By certified mail with return receipt, addressed to the person or persons listed on the complaint; or
- (4) By any means authorized in the Arizona Rules of Civil Procedure.

(D) Where the defendant is a corporation, partnership, or association the words **DEFENDANT** or **PERSON** in subdivisions (C)(1), (2), (3), and (4) above shall mean a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

(E) Any town official or employee with responsibility to enforce or administer the particular area of the town code or a town ordinance for which the enforcement action is brought, or any peace officer, may file an enforcement action on a civil code infraction and may serve the complaint and notice of hearing in the manner set forth in subdivisions (C)(1), (2), (3), or (4) above. The Civil Hearing Officer may enter an award in favor of the town for the actual costs of service if a civil code infraction is found, whether or not a civil penalty is assessed.

(F) The Town Attorney or the Town Prosecutor may file a complaint alleging a civil code infraction with the Civil Hearing Officer. Such complaint shall specifically identify the defendant, the date and time of the alleged civil code infractions(s), the location of the alleged civil code infraction(s), and the civil code infraction(s) alleged by town code or ordinance section number and description. The complaint shall be signed by the Town Attorney or Town Prosecutor before the Civil Hearing Officer upon the Town Attorney's or Town Prosecutor's avowal that he/she has reasonable grounds to believe that the named defendant committed the civil code infractions described in the complaint. When a

EXHIBIT 3

Americans with Disabilities Act Notification: *In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), the Town of Cave Creek does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in, its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in Town programs, activities, or services contact the Town Clerk, 37622 N. Cave Creek Rd., Cave Creek, AZ 85331; (480) 488-1400.*

**NOTICE AND AGENDA
SPECIAL TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
TUESDAY, MAY 28, 2013**

5:00 PM

CALL TO ORDER 5:00 P.M. Vincent Francia, Mayor, 37622 N. Cave Creek Road, Cave Creek, AZ.

ROLL CALL Mayor Vincent Francia, Vice-Mayor Ernie Bunch, Council Members Shelley Anderson, Jim Bruce, Dick Esser, Steven LaMar, Thomas McGuire.

Page

PLEDGE OF ALLEGIANCE

PUBLIC ANNOUNCEMENTS

CALL TO THE PUBLIC

ACTION ITEMS:

A. GENERAL AGENDA ITEMS

3-11

1. **COUNCIL DISCUSSION AND APPROVAL OF
RESOLUTION R2013-08 SETTING FORTH THE OFFICIAL
RETURNS AND APPROVING THE OFFICIAL CANVASS OF
THE GENERAL/SPECIAL ELECTION HELD ON MAY 21,
2013.**

Placed on the Agenda by the Town Clerk, Town of Cave Creek.

Public Comment

A. GENERAL AGENDA ITEMS

Council Action Needed: Motion to approve Resolution R2013-08 setting forth the official returns and approving the official canvass of the General/Special Election held on May 21, 2013.

SUMMARY OF CURRENT EVENTS BY MAYOR

. ADJOURNMENT

POSTED THIS 22nd day of MAY, 2013

BY: _____
Carrie A. Dyrek, Town Clerk

RESOLUTION NO. R2013-08

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE
TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA,
SETTING FORTH THE OFFICIAL RETURNS AND APPROVING
THE OFFICIAL CANVASS OF THE GENERAL/SPECIAL
ELECTION HELD ON MAY 21, 2013.**

WHEREAS, a General/Special Election was held on the 21st day of May, 2013, for the purpose of submitting to the vote of the qualified electors of the Town of Cave Creek, Arizona, the following: the names of five (5) candidates running for the **Office of Council Member** of the Town Council of the Town of Cave Creek, for which six (4) seats were available; and the following question:

Proposition 459: Referendum ordered by petition of the people of the Town of Cave Creek
Official Title

Ordinance No. O2012-08 An Ordinance of the Mayor and Council of the Town of Cave Creek, Maricopa County, Arizona, amending the official Town of Cave Creek Zoning Map by changing the underlying zone of Parcels 211-47-101A and 211-47-102A, described in Exhibit 1 and depicted in Exhibit 2, from Desert Rural (DR-89) to a General Commercial (GC) Zone. The subject parcels are located northwest of the intersection of Carefree Highway and Cave Creek Road between 54th and 53rd Streets, and

WHEREAS, the Town Council of the Town of Cave Creek, Maricopa County, Arizona, has canvassed the returns of said election;

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CAVE CREEK, ARIZONA AS FOLLOWS:**

Section 1. That the total number of ballots cast at said Primary Election, as shown by the poll lists, was:

Number of Ballots Cast	1,716
------------------------	-------

Section 2. That the number of votes cast for the candidates for Council Member were as follows:

<u>CANDIDATES FOR COUNCIL</u>	<u>NUMBER OF VOTES RECEIVED</u>
Durkin, Mike	977
Wright, Eileen	880
McGuire, Thomas	963
Monachino, Reginald	960
Spitzer, Charles	904

Section 3. That it is hereby found, determined and declared of record, that the following

four (4) candidates did receive the highest number of votes for the seats for Council Member and shall be issued certificates of election:

Durkin, Mike
McGuire, Thomas
Monachino, Reginald
Spitzer, Charles, and;

Section 4. That the number of votes cast for the ballot question were as follows:

Proposition 459: (Ordinance No. O2012-08)

Number of votes FOR	1,070
Number of Votes AGAINST	592
Under votes	54
Over votes	0

Proposition 459 is declared to have been **approved**.

Section 5. This resolution shall be in full force and effect immediately upon its adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN
OF CAVE CREEK, ARIZONA this 28th day of May, 2013.

Vincent Francia, Mayor

ATTEST:

Carrie A. Dyrek, Town Clerk

APPROVED AS TO FORM:

Marlene A. Pontrelli, Town Attorney

MRC_20130521_E
May 21, 2013
Summary Report
MARICOPA COUNTY
FINAL RESULTS

Registration & Turnout		54,080	Voters
Election Day Paper Turnout		284	0.53%
Early Voting Paper Turnout		12,410	22.96%
Early Voting Edge Turnout		0	0.00%
Election Day Edge Turnout		17	0.03%
	Total ...	12,711	23.51%
COUNCILMEMBER - TOWN OF CAVE CREEK (vote for 4)	(1)	1/1	100.00%
Under Votes: 2061			
Over Votes: 28			
- DURKIN, MIKE		977	20.46%
- WRIGHT, EILEEN		880	18.43%
- MCGUIRE, THOMAS		963	20.17%
- MONACHINO, REGINALD		980	20.10%
- SPITZER, CHARLES		904	18.93%
Write-In Candidate		91	1.91%
	Total ...	4,775	100.00%
COUNCILMEMBER - TOWN OF GILA BEND (vote for 2)	(1)	1/1	100.00%
Under Votes: 83			
Over Votes: 0			
- YOUNG, DONNY		116	24.12%
- BIRCHFIELD, DANIEL		107	22.25%
- HENRY, RON		129	26.82%
- TURNER, JAMES "BUD"		128	26.61%
Write-in Candidate		1	0.21%
	Total ...	481	100.00%
COUNCILMEMBER - CITY OF GOODYEAR	(1)	1/1	100.00%
Under Votes: 8			
Over Votes: 6			
- HOHMAN, SHAROLYN A.		3,691	53.35%
- HAMPTON, BRANNON J.		3,189	46.09%
Write-In Candidate		39	0.56%
	Total ...	6,919	100.00%
MAYOR - TOWN OF GUADALUPE	(1)	1/1	100.00%
Under Votes: 33			
Over Votes: 0			
- JIMENEZ, REBECCA		429	52.44%
- SOLAREZ, A. "YOLY"		386	47.19%
Write-In Candidate		3	0.37%
	Total ...	818	100.00%
COUNCILMEMBER - TOWN OF GUADALUPE (vote for 2)	(1)	1/1	100.00%
Under Votes: 362			
Over Votes: 4			
- COTA, GLORIA		363	27.17%
- MARTINEZ, CINDY		315	23.58%
- VALENCIA, BENITO FELIX		292	21.86%
- VALENZUELA JR., FAUSTINO C.		365	27.32%
Write-In Candidate		1	0.07%
	Total ...	1,336	100.00%

May 22, 2013 1:48 PM

Page 1 of 2

MRC_20130521_E
May 21, 2013
Summary Report
MARICOPA COUNTY
FINAL RESULTS

TOWN OF QUEEN CREEK QUESTION		(1)	1/1	100.00%
Under Votes:	1			
Over Votes:	1			
- YES			2,550	87.06%
- NO			379	12.94%
		Total ...	2,929	100.00%
TOWN OF CAVE CREEK PROP 459		(1)	1/1	100.00%
Under Votes:	54			
Over Votes:	0			
- YES			1,070	64.36%
- NO			592	35.62%
		Total ...	1,662	100.00%

MRC_20130521_E
5/21/2013
Precinct Canvass
MARICOPA COUNTY

1 COUNCILMEMBER - TOWN OF CAVE CREEK (vote for 4)

				1	1	1	1	1	1	1	1				
	Registered	Ballots Cast	Turnout (%)	DURKIN, MIKE	WRIGHT, EILEEN	MCGUIRE, THOMAS	MONACHINO, REGINALD	SPITZER, CHARLES	Write-In Candidate	Over Votes	Under Votes				
5551 - CAVE CREEK	3636	1716	47.19	977	880	963	960	904	91	28	2061				
	3636	1716	47.19	977	880	963	960	904	91	28	2061				

1 TOWN OF CAVE CREEK PROP 459

	Registered	Ballots Cast	Turnout (%)	1 YES	1 NO	1 Over Votes	1 Under Votes									
5551 - CAVE CREEK	3636	1716	47.19	1079	392		54									
	3636	1716	47.19	1079	592	0	54									

MRC_20130521_E
May 21, 2013
Subdivision Report
MARICOPA COUNTY
FINAL RESULTS

CAVE CREEK

Registration & Turnout		3,636	
Election Day Paper Turnout		0	0.00%
Early Voting Paper Turnout		1,716	47.19%
Early Voting Edge Turnout		0	0.00%
Election Day Edge Turnout		0	0.00%
Total...		1,716	47.19%
COUNCILMEMBER - TOWN OF CAVE CREEK (vote for 4)	(1)	1/1	100.00%
- DURKIN, MIKE		977	20.46%
- WRIGHT, EILEEN		880	18.43%
- MCGUIRE, THOMAS		963	20.17%
- MONACHINO, REGINALD		960	20.10%
- SPITZER, CHARLES		904	18.93%
Write-In Candidate		91	1.91%
Total...		4,775	100.00%
TOWN OF CAVE CREEK PROP 459	(1)	1/1	100.00%
- YES		1,070	64.38%
- NO		592	35.62%
Total...		1,662	100.00%

**MARICOPA COUNTY
RECORDER'S INFORMATION SYSTEMS CENTER
REJECTED BALLOTS BY PRECINCT / CPC**

Election Title: TOWN OF CAVE CREEK

Election Number: 1234

Election Date: 05/21/2013

<u>Precinct/CPC Number</u>	<u>Precinct/CPC Name</u>	<u>Reason</u>	<u>Number Rejected</u>
5551	PPNO 1 - CAVE CREEK	BAD SIGNATURE	2
		RETURNED LATE	9
		NO SIGNATURE	7

Bad Signature Total: 2

Returned Late Total: 9

No Signature Total: 7

Total Rejected: 18

EVRTF33 Cumlative Totals Report**MARICOPA COUNTY
RECORDER'S INFORMATION SYSTEM CENTER****Date: 5/22/2013****Election No.: 1234 TOWN OF CAVE CREEK****Mode: MOVED****Barcode(s):**

123404108644401	123420245975501	123420210340901	123495944807201	123420030754101	123420264043201
123420302230401	123420304197301	123420305052301	123420311830901	123420212101601	123420282069401
123481053384101	123420076626501	123461002675501	123461002810501	123420287579601	123420022150401
123420138971501	123420138971901	123481189731401	123481189733301	123481194221501	123495948290201
123420047147401	123407003711101	123420129940701	123420230146801	123420213975601	123481062313501
123495928202101	123495928204801	123420024120001	123420024415301	123420109516501	123420295220901
123495914374401	123499032756901	123420123475701	123420216003001	123420260558001	123495944067101
123495999211801	123495999284501	123405073306601	123420242896601	123420283582201	123495961672901
123495962124801	123404065835601	123420104360801	123420232346401	123495933392301	123420150211701
123420244447801	123496024389801	123420021156001	123404057457501	123404057457601	123420145078301
123407006628701	123420118098301	123420118911401	123499112913301	123405034615701	123420262362901
123400205253301	123496118740201	123499092161501	123420238325201	123420278697401	123420248793601
123499180634701	123406037373101	123495025619101	123498007716301	123404074443401	123420010901501
123420038962401	123420059896901	123420093937501	123420110119801	123420237628301	123481077649901
123481077663901	123420110412501				

Mode: TEMP**Barcode(s):**

123412014741401	123420264039701	123496123149201	123496123149301
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Subtotal Moved Away Mode:**86****Subtotal Temp Away Mode:****4**

**MINUTES
SPECIAL TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, MAY 28, 2013**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 5:00 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Ernie Bunch, Council Members Shelley Anderson, Jim Bruce, Dick Esser, Steven LaMar, Thomas McGuire (arrived later)

Council Absent: None

Staff Present: Town Manager Usama Abujbarah
Town Clerk Carrie Dyrek

PLEDGE OF ALLEGIANCE -- Everyone stood and recited the Pledge of Allegiance.

CALL TO THE PUBLIC

Mike Durkin, 7139 E. Continental Mountain thanked all out-going Council members for their service to the community. As we all know, the citizens of Cave Creek have replaced 2/3 of the council. It's clear that citizens want change. Looking toward helping to effect that change he studied the Town Code and was initially concerned that council members might be limited in their ability to introduce agenda items. Had a meeting with the Mayor and the Town Manager and the Town Attorney last week and was very pleased to learn and was told face-to-face by the Mayor that he has never in his 14 years blocked a member from introducing an Agenda item and would not do so in the future. That was very heartening to him.

Between the Primary and General Election he spent many, many hours reviewing meeting minutes for the Town of Cave Creek; spent many, many hours on the phone with many citizens with the goal to help him form what he feels is the Vision that the citizens of Cave Creek have for the Town. It's clear that vision involves change. It's up to the new Council to architect that change and he has come to a few conclusions about where he is going to go in the spirit of open government, total transparency. He announced at this public meeting that he will be introducing agenda items to create a committee to bring to fruition an integrated and comprehensive development and capital improvement plan he feels the Town desperately needs. He plans to introduce an agenda item to create the office of Chief Financial Officer that will report directly to Council. And he has come, after much deliberation, to a realization that the vision for the citizens of Cave Creek is not aligned with the present Town Manager. He plans to introduce a Resolution to call for a vote of confidence in the Town Manager. Once again, he thanked the

outgoing members for their service and hopes that, as the need arises; he will be allowed to call them if he needs counsel and that they can be of much help.

Adam Trenk, 5829 E. Gunsight Road didn't hear half of Mr. Durkin's comments by coming in late. He has a statement he would like to make in the same spirit as approaching the agenda item. First he congratulated Councilman McGuire on his re-election as well as Mr. Durkin, Mr. Spitzer and Mr. Monachino and Councilman McGuire and wanted to thank those sitting on the Council for their service.

Over the course of the last many months there has been much speculation over the position of the challenging candidates with regard to the Town Manager, specifically. He believes that much of that speculation undermines their ability to work together so in order to move forward with a fresh slate he felt that air needed to be cleared as quickly as possible. Therefore, he suggests an agenda item in that regard and has prepared a letter to submit to the Mayor and the Town Clerk. He read his letter for the record, which read as follows:

Enclosed is an agenda item he would like to have the Council deliberate on, specifically a request to add the below label agenda item A posted for discussion and possible action at the regularly scheduled meeting of the Council that will be held on June 3, 2013. In accordance with Section 30.38E of the Town Code, I hereby request that the Mayor waive the 7-day deadline and amend the agenda accordingly. Considering the agenda for said meeting was only just released today, one day short of the requisite 7-day posting period, due to yesterday's holiday, under the Town Code, it should be acceptable for amending the agenda this evening or at latest tomorrow and posted to be amended in excess of the minimum 24 hour notice in timeframe. In other words the Town Code calls for seven days to post an agenda item or to post the agenda but the Mayor has the ability to amend it in less than seven days. Because the agenda was just released today, I think it is appropriate to amend the agenda accordingly. I have copies of this letter for the Mayor.

Monachino stated he supports Mr. Trenk's statements with regard to agenda items and hopes we can move as quickly as possibly.

Spitzer, Cave Creek resident also wanted to thank all for the many years of hard work that they have all done on behalf of the Town. At times it hasn't been easy to listen to those who are asking for things and it won't be easy the other way around.

Mayor Francia thanked this Council for its service to the community, principally because they helped to shepherd this community through very difficult times and got it to where it is today that we are functioning. And now we have a new Council and we are proceeding forward as a community.

ACTION ITEMS:

- A. COUNCIL DISCUSSION AND APPROVAL OF RESOLUTION R2013-08
SETTING FORTH THE OFFICIAL RETURNS AND APPROVING THE**

**OFFICIAL CANVASS OF THE GENERAL/SPECIAL ELECTION HELD
ON MAY 21, 2013.**

Town Clerk, Carrie Dyrek announced the returns about the Town's contract with Maricopa County Elections which are attached to the Resolution, indicating the results and the official canvass of the General/Special Election held on May 21, 2013. We are required to canvass the election at a Council meeting no earlier than six days to meet that requirement.

COUNCIL QUESTIONS - None

PUBLIC COMMENT - None

COUNCIL COMMENTS

Francia – Let the record reflect that Councilman McGuire is present. He called for a motion.

M/Esser, S/Bunch to approve Resolution R2013-08 setting forth the official returns and approving the official canvass of the General/Special Election held on May 21, 2013.

Esser welcomed the new Council members and offered help to any of them and stated he was available. He stated he was glad their commercial item was passed and approved.

Bunch – No comment.

S. Andersen wished everybody luck and moving forward, she hoped all would be able to work together because it cannot go on one person alone. Thanks for stepping up.


McGuire - looked forward to working with all members of the new council.

Francia – In regard to the new council that is about to be sworn in here in the first meeting of June, and he says this to himself as well as to anyone else, he thinks the key for all going forward is really quite simple. If everybody gives everyone a chance we will be fine.

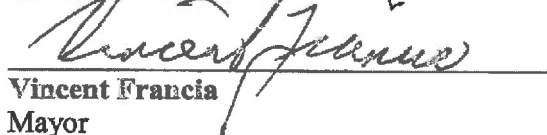
M/C 7-0 by voice vote.

ADJOURNMENT AT 5:11 P.M.

SUBMITTED BY:


Carrie A. Dyrek
Town Clerk

APPROVED BY:


Vincent Francia
Mayor

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the Minutes of the Special Session of the Town Council of Cave Creek held on the 28th day of May, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 26th day of June 2013

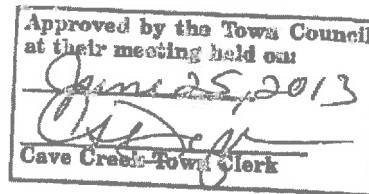


EXHIBIT 4

5/28/2013

To: Mayor and Clerk, Town of Cave Creek

From: Adam Trenk, Councilman-Elect

Re: Proposed Agenda Items for June 3, 2013 meeting.

5785 E. Azure Hills
Cave Creek, AZ
85331

Dear Mr. Mayor and Ms. Dyrek,

Below is an agenda item I would like to have the council deliberate on. Specifically I request to have the below labeled "Agenda Item A" posted for discussion and possible action at the regularly scheduled meeting of the Council that will be held on June 3, 2013. In accordance with §30.38(E) of the Town Code, I hereby request that the Mayor waive the seven-day deadline and amend the agenda accordingly. Considering the agenda for said meeting was only just released today, one day short of the requisite seven day posting period due to yesterday's holiday, it should be acceptable to amend the agenda this evening or at latest tomorrow and post the amended in excess of the minimum 24 hour noticing time frame.

Agenda Item A:

Council discussion and possible action regarding the employment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager:

Possible Executive Session:

Notice is hereby given that, at any time during the discussion of the agenda item before taking action, the Town Council may make a motion to recess into Executive Session regarding discussion or consideration of the employment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the town manager or to consult with the attorneys and representatives of the public body for legal advice regarding the employment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager. A.R.S. §38-431.03(A)(1) and (A)(3).

Your attention to this matter is greatly appreciated.

Sincerely,

Adam Trenk

Agenda

EXHIBIT 5

**MINUTES
SPECIAL TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, JUNE 10, 2013**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:00 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie Dyrek

Council Present: Council Members Mike Durkin, Charles Spitzer, Thomas McGuire, Ernie Bunch, Adam Trenk, Reginald Monachino, Mayor Francia.

Council Absent: NONE

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie Dyrek
	Town Attorney	Fredda Bisman and Ann Tiffen

PLEDGE OF ALLEGIANCE

PUBLIC ANNOUNCEMENTS

Mayor Francia announced Fire Service has raised the fire alert to very, very high so take water as well as electrolytes so if you are hiking in the extreme heat.

Mayor Francia announced a special session of the Town Council on June 25, 2013.

CALL TO THE PUBLIC

Marc Paegler, 6245 E. Cave Creek Road spoke about the long history of the Councils taking actions for the greater good from money received. He spoke unfavorably about a former Mayor and Town Planner and Town Manager. This is a place for us to accomplish things as a Town and personal feelings should be put aside to get done the things that need to be done to move forward.

John Ford stated he was out of Town last week and congratulated all the new Council members. He looks forward to working with them.

Lawrence Warfield, 7015 E Continental Mountain Road stated he was looking forward to working with the new council members. He asked Council to look at the "lame duck" session. He questioned the appropriateness of suing a person who agrees to run for office and later withdraws. When the Court rules that a legal bill is tagged onto the Town, it is hard for him to understand how the Town is responsible for that. He urged this council to look back and see if this was appropriate.

Mike Noonan, 5920 Gunsight stated he had lived in Cave Creek since the early 90s and operated several businesses here. He is encouraged by the seating of some new members of the Council

but more importantly he still represents a great many of the land owners here. His concerns are that the groups he represents have been stifled by an enormous bureaucracy in trying to get anything accomplished without enormous cost processes. He encouraged fiscal responsibility for this town and streamline the process to develop new guidelines for developers.

ACTION ITEMS:

A. GENERAL AGENDA ITEMS

1. Council discussion and consideration of the employment, assignment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager and/or consultation with the attorneys of the public body for legal advice regarding the employment, assignment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager. A.R.S §38-431.03(A)(1) and (3).

ITEM MOVED FROM AN EXECUTIVE SESSION TO PUBLIC MEETING AGENDA

Mayor Francia explained the procedure for this evening is a little different than most. Those who have been in meetings before are used to the Mayor conducting the meeting in a certain way. Because of the subject matter this is a little different; almost like Council being in Executive Session, which is private and restricted but we invited 200 of our favorite citizens to attend. He announced that the Town is represented by two attorneys tonight; Fredda Bisman and Ann Tiffen. The Town Manager, Usama Abujbarah is represented by his attorney. He asked Attorney Bisman to explain further.

Town Attorney, Fredda Bisman explained the first item on the agenda is Council discussion and consideration of the employment, assignment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager. This is statutory language required by the Arizona Open Meeting Law. The Council is going to evaluate and otherwise discuss with one of their appointees, their duties and other matters which can include contractual matters as well. Under the Open Meeting Law the employee under discussion has the right to have the discussion in public and that is what is going to happen tonight. The first part of the meeting is of discussion and consultation.

Counselor Dan Bonneti Attorney with the Law firm of Martin & Bonnet in Phoenix. He was asked by the Town Manager to represent him this evening. He has been asked by the to raise some things; some of them are procedural matters and depending on how Council would like to proceed after the various issues are raised and he may ask some substantive comments.

He moved to Arizona from Illinois in 1991 and grew up in a farming community of 600 people so he is not unfamiliar of how government in less than a million plus population works. There are often times many issues that can divide a community and when that happens, frequently it is not uncommon for decisions to be made in a passionate and sometimes not crystal clear view of what is in the best interest of the constituents which you represent. He comes with that background and experience.

He had a conversation earlier today with Council and he heard of a couple procedural issues and his questions were addressed. He felt they should be raised and be put on the record so they are not deemed to be waived at any time. So he would like with the Mayor's permission to raise points of order.

1. He read in portions of the Town Code that deal with the issue of special meetings such as this. It is his reading of the Code Section 30.35B that when a special meeting is called it must be called either by the Mayor or by a written request of four Council members. When he looked at the agenda and asked Counsel if there were any public records on how this meeting was noted but he has not been provided with nor do I see whether this special meeting was convened at the Mayor's request or whether it was convened at the request of four council member. Either way, it should be part of the record that this proceeding is that this procedural matter so if there are questions later on about any action Council may take that the record is clear whether or not this meeting is convened in accordance with Open Meeting Laws in Town's own Charter. So I believe that is a matter of procedural inquiry and leave it to the Mayor and Counsel to decide on how to address this matter. He doesn't think the record is clear on that point.

2. He believes as he addressed with Counsel, Section 31.25F of the Town Code addresses a situation regarding the removal of the Town Manager. The prior section 31.25 addresses the other aspects of the Town Manager including employment and issues related to a number of things including what would happen if there were to be a decision made for removal. When he read Section 31.25, subsection F of the Town Code, it wasn't crystal clear to him about a couple of procedural matters that may be procedurally important in the process as well as whether or not the Council is proceeding in accordance with the authority granted in the Town's charter.

Again, Section 31.25, subsection F provides that In the event that Town Council decides to remove the Town Manager, the Town Manager must be furnished with a written notice stating the Town Council's intention to remove him or her and the reasons therefore at least 30 days following Notice of Removal, providing such request is made within seven days from the date of Notice of Removal. The next sentence talks about suspension or the ability to suspend pending the actual effective date of removal. He believes one interpretation of this section, and one interpretation that he believe isn't a stretch but is a fair reading of that language, is that before official action can be taken, that previous removal there has to be written notice of the intent of removal, not a written notice of a discussion or not a written notice of a special public or executive session meeting, but a notice of the intent to remove and that the next part of the sentence that talks about providing reasons makes some sense because in a session such as this, where there is a discussion, it is very difficult for any employee, and Mr. Abujbarah is no different in that sense, to be able to respond or participate or provide useful information to the Council about what reasons the Council may be contemplating for any action, without having a notice in advance of what concerns there may be, if in fact there are any concerns. He knows there are different interpretations of that language but again it is important to understand that if the intent here is to make a fair and informed evaluation, then it necessarily would require an opportunity for some input from the person who is subject of the discussion. In order for that to occur, obviously he needs to know what is that is of issue so he would be able to prepare and present responses in a reasonable and intelligent manner.

Those are the two procedural issues that are matters of procedural points in terms of order or procedural information that he addressed to the Mayor and the Council members. Any substantive comments he can reserve or make them now.

Freda Bisman – As to the first question about the special meeting and how it was set, is that you know your Code provides that the Mayor may call Special Meeting or four Council members in writing may call it. Her understanding is that this Special Meeting was called by the Mayor and that there were no public records, and it is not required that you make that request is my understanding at least today of the facts. As to the second matter in terms of the written notice, she spoke briefly and stated she would ask Ms. Tiffen if she has anything to add. From our perspective, until four Council members have indicated in a public meeting their intent to take any action including the action to remove an appointee, there has to be that vote of public session so that it might be possible from the municipal law point of view for that notice to take place until there has been some action in public meeting.

Ann Tiffen added that if you look at the timeframe in subsection F, the timeframe can only operate after the decision to terminate has been made. So under the Subsection F the request has to be made within 7 days “following notice of removal” and then after that request is made, the 30 day notice is given which is within 30 days after removal. Those periods can only operate after a decision has been made. That provision is further clarified in the contract itself.

Bonnett – Mayor, may I proceed with what I just labeled as subsequent comments?

Francia responded that he was satisfied with what their attorneys are telling them and that we should proceed.

Bonnett– One point of order is, I respectfully disagreed with one thing in that I don’t believe the record is clear at this point who called this special meeting. I agree the Ordinance doesn’t say the Mayor has to make that request in writing, but I think their reading is that record needs to reflect who it was that called it, because if it wasn’t the Mayor who called it, then it procedurally defective because there is no writing of four council members to make their requests. So in order for the record to be clear, I think it is fair of my client to ask, for the record who has called for this special meeting.

Francia responded that he had called the meeting.

Bonnett – I’d like to ask you to put aside whatever political views you may have for a moment and think about the pledge that was taken at start of this proceeding...pledge allegiance to the flag of the country for which it stands. And what it stands for means giving, as pledge ends, justice to all. It would seem appropriate that before any decision is made by a council that has been seated for one week that a fair consideration is required and a fair analysis is required of the performance of someone who has been your Town Manager for the last 17 years. Quite candidly he felt that was a huge task for anyone to undertake in a period of one week. I think in your office as Council members, Vice Mayor, and Mayor your deliberation and your discussion about this should take place in this forum, not outside this forum.

So to the extent that there have been discussions or issues or familiarity of the things that may have occurred before today, I would submit to you that the process by which this analysis could

be made in the context of this proceeding; information provided by city staff, information provided by the public records of this Town so that it is appropriate to consider those factors in addition to other factors that may be forming or fading in notions that anybody may have before coming here this evening. He doesn't see how that can happen in a week. To do otherwise is to act precipitously, a slide-back into what he sees going on too frequently across this country, and that is to let differences in political respect to shape your decision-making as opposed to acting in the best interest of the citizens of this Town and what is in the common good of the Town itself. And for the last 17 years it would seem that if there has been a problem with the present Town Manager that some actions would have been taken before this new council came in.

So it just doesn't seem that acting quickly is the better course of action. In fact, acting precipitously before a full and thorough evaluation may be seen by some people as evidence of some other less appropriate part of the decision-making process. Maybe there is animus that is motivated whether it be political or discriminatory on the basis of something that might be inappropriate. We are not here to make those accusations. I don't think that is in the best interest to make that kind of judgment. It would again seem appropriate to the extent that there are specific questions or discussions about things that may be identified, that Mr. Abujbarah have a sufficient opportunity to prepare a response to them. So I think that course of action is appropriate and frankly I don't see how that can happen this evening and frankly I don't see how that can happen in any time short of a couple of months. Because it is on the agenda tonight, it doesn't mean you have to vote on it. It can be tabled or it can be sent back for further study or analyzed and discussed over the course of several months.

In terms of any specific response, I would have to defer to your Town Manager to tell you what his position is and any course that has been taken or not taken over the last 17 years. I simply don't have that information available.

And lastly, the contract that he is currently working under is scheduled to end in July 2014. I believe that there is a reason for why that was the target date selected, as it relates to plans for eventual decision-making when it comes to possibly retiring because it would qualify for the timing. So you are not all that far away from the end of the contract anyway and it would seem that it would be in the best interest of all to partner and try to figure out over the next year what needs to be done, what the priorities are, how it best can be addressed rather take action that might start proceedings in a direction that probably isn't what you would like to see happen. The business of government is to govern, business of Town Manager is to manage and the business of all those things is to improve and serve the welfare of the citizens. He urged them to keep those things in mind. He asked Mayor to the extent that there are questions about any specific factual issues relating to his performance or any issues relating to any acts or duties or responsibilities as it relates to the Town Manager that he may be given an opportunity to respond to them or to the extent that there is a need to gather information in order to respond that also be considered by the Council.

2. **Council discussion and possible action regarding the employment, assignment, compensation, benefits, promotion, demotion, dismissal, termination and/or resignation of the Town Manager.**

Placed on the Agenda at the request of Vice Mayor Trenk, Town of Cave Creek.

Francia stated the agenda is divided into three sections. A.1. is what we are about to embark upon. It's a council discussion and consideration of the employment, assignment etc. etc. of the Town Manager. A.2. is where Council may get into possible action regarding the employment, the assignment, compensation, etc. of the Town Manager. At that point there would have to be a motion made on Council with a specific intent and there would have to be a second. Then we go to public comment where citizens get a chance to speak. Right now, Counsel has advised no motion can be made during this period. It is as if we were in Executive Session with the Town Manager and talking about what you feel about his employment so avoid any motion-making at this time. We will start with Vice Mayor Trenk and each of Council members will have opportunity to speak.

Vice Mayor Trenk – First is a point of order...as you were going through the agenda you suggested that a motion would need to be made before we go into public comment. The procedure has generally been public comment before a motion. Why is that not the case this evening?

Francia stated he will follow that procedure. The only reason he read it that way is that is how it is on the agenda. Otherwise we are finished, after the Council...if Legal Counsel gives me leeway here, after we are finished with the first part, he will then go to the citizens for their comment and then come back to Council for a motion.'

Bisman gave the Mayor the discretion to change the order of the agenda.

Trenk stated he called this meeting, or he asked at Call to the Public on May 28th to have this on the agenda on June 3rd. He requested Mayor to put it on the agenda because he served on the Council from 2009 – 2011 and then participated in a vigorous campaign. There were a number of dynamics that occurred both while he was on the Council in 2009 and 2011 and again during the campaign season this past winter and spring that have eroded any confidence he had to be able to work with the Town Manager. He felt that a lot of the speculation that has occurred has undermined their ability to work together and felt if we were going to move forward we needed to clear the air and have a clean slate. To the extent you want specifics; he doesn't know that it is relevant. He recognized the faces in the room and felt everybody knows what 99% of them are if you've ever come to these meetings or read the paper but he gave a couple specifics.

Trenk asked Counsel if it was appropriate to ask questions of the Town Manager at this time.

Bisman responded to **Trenk** that Council should discuss elements of their review and provide their comments and then come back to address questions.

Trenk stated that the extenuating circumstances have undermined his ability to work with the Town Manager until we have a performance review and decide how to proceed with a clean slate.

Durkin addressed the Council. He stated that he had begun taking this matter very seriously around the first of the year based on some actual comments from voters as he spoke with them

on the phone. Contrary to what Counsel for the Town Manager was alluding to, he had spent much time looking into and establishing his own evaluation for the alignment of our present Town Manager with the vision of what he believes this Council has for the future of Cave Creek. His decision is that those two visions are not aligned and he did not feel confident moving forward for the good of the citizens of Cave Creek. And that is the only basis for his decision. He doesn't see the present Town Manager being able to support the vision that he believes this Council has for Cave Creek.

Monachino stated he had nothing to add.

Spitzer stated he has been in Cave Creek for twelve years and has attended most of the Town meetings. He spoke out frequently both for and against the actions of the Town Manager and the Town Council over the last 12 years. During that time the Town Manager has made some unwise decisions. He has not negotiated on behalf of the Town wisely in some cases and in some cases he has. There have been decisions being made by the Town Manager that impacted what the Town Council has done in the past and Spitzer doesn't have any trust in him in the future.

McGuire stated that Councilman Durkin referred to the vision of the Council. He felt there were priorities expressed during the campaign and he respects those. As a Town Council they have not discussed the vision and we really need to do that. There was an original plan that tonight would be a session of the new Council to discuss our visions and to make it a session that would bring the Council together. He felt they really needed to do that. The performance of a Town Manager is something that can't be looked at with regard just to the Town Manager; we have a new Council. There are concerns, always will be, about the performance of any Town Manager but in order to express those concerns there are two things that are essential. We had an election; new Council was elected and if this Council chooses to take directions that are markedly different from the previous Council, we certainly can do so. But he didn't feel they could evaluate the Town Manager at this point based upon new directions of the Council because he has not had a chance to work with those new directions. He felt evaluation of the Town Manager at this point is clearly premature.

Bunch stated that over the last 36 years he had occasion to have many employees. The only employees he ever had that didn't make mistakes or have lapses in judgment and did things incorrectly were people who weren't doing anything at all. If the folks didn't like what they were doing he sat down and talked to them, explained what he didn't like. It may be that Council has been lax in doing that in things we didn't like about the Manager. He thought it was totally and wholly unfair at this stage of the game, it's early in the game, to go with the campaign promises that some folks have made to fire the Town Manager immediately without an opportunity to actually work and try to share, let him bring our visions as a Council to fruition.

Francia responded to all that generally the procedure with a new Council when it is sworn in is that one of the first things is a retreat. And at that time the incumbents and the newly elected get with the Town Manager and they put forth the agenda that they would like to bring forth. And many of those items you probably have heard them speak during the election and it's one of the roles of the Mayor to make sure that the Town Manager and the Staff have the proper support to

bring these things forth. The Mayor hasn't had chance to have totally in-depth conversations with the four newly elected but he has had opportunity to hear some of their ideas and he likes them. Some of them he felt needed to be refined but the ones he heard from Councilman Durkin about a 2, 5, 10 year capital improvement plan is very appealing to him; to bring to the citizens of this community the consideration of term limits is timely and absolutely on point. And this is coming from a Mayor who has spent the last 15 years in this Chair. But he feels that is absolutely timely for that. Councilman Spitzer...he is giving him every support possible on this theme of Open Government and Councilman Spitzer is very dedicated to making the government as open as possible. And better still he has the experience of the computer world, of making this possible. He is very supportive of that...that is something that is brought to the Town Manager and he carries that out.

Different Council people have things they would like accomplished and he is quite singular in this 8th term, He wants that annexed land...those 4,400 acres under Town ownership. He doesn't want to wait another year and for that purpose he is going to rely on Councilman Monachino who has 35 years experience on Wall Street. He can certainly pull this off for the small community of Cave Creek of how we can make that happen. Then we come to Vice Mayor Trenk, at the risk of just plunging his political career, he is a friend, and even though we are probably going to vote differently on many things that come before us, the friendship is such that we can do that. What do I like about him? I like his passion, his commitment, his vision, his ambition and felt it could be put to good use for this community. In that sense he would like to see him step forth on this night as a future statesman. But the procedure is generally for the Council to assemble with the Town Manager and say: "this is our agenda, this is what we want you to carry out" and it is the Mayor's policy that if you want something on the agenda, it is going to be on the agenda. His opinion is irrelevant, what is relevant as that it comes before us as the elected citizens among our fellow citizens to be presented publicly and if this or any Town Manager is unwilling to do that then he would have a problem with this Mayor. And this is not a Mayor you want to have that type of problem with.

Francia commented that he understood political pressures, but the Council has been elected to serve an entire community and so at this time he would favor assembling in the near future, as soon as possible, in retreat and get all of Council's items out to this Town Manager. And if he fails to live up to what you feel is the proper implementation of your agenda items, then we have every right to assemble once again and call his contract into question but at this point he felt the cart is way before the horse on this. Seven of us have spoken does anyone wish to continue speaking?

Trenk stated that what he has seen since he has been in the Town about five years is a Town Manager who has almost unabashedly involved himself in political process as opposed to working at the request of the Council to fulfill their agenda. He gave some example: he believes he has directed legal counsel with regards to contracts and statutory construction and interpretation; he has solicited public participation from friends and leaked incomplete proposals before they were agendized in an effort to sway public opinion against Council proposed policies or pending proposed policies; he believes he has provided unsolicited disclosures of private information about citizens discovered in the course of the Town's operations with media outlets; he believes that he has unilaterally placed items on the Consent Agenda knowing that the

Council would not engage in discussion of those items when those issues knowingly had the potential to exposed the Town to liability as a favor to a friend; he believes he has unilaterally decided where to construct Town public works projects without oversight or survey resulting in developments encroaching on private property costing the Town millions of dollars.

Trenk stated he has read the contract and he has read the Town's ordinance and he doesn't see where those documents give Mr. Abujbarah the authority to do these things. For many, many years these actions have gone unchecked by the seated Council but, we just had an election and, elections have consequences and there are hundreds of years of precedent of new administration replacing their staff. That truly was not his intention. He had a conversation with Mr. Abujbarah that if we could reassign him for the duration of his contract and have him facilitate the transition of a successor, I think that that might be a happy medium for everyone. But, I am getting the sense from my colleagues here that that is not going to happen tonight. And so I guess we will have to proceed and see how this shakes out tonight.

Bonnett responded that he trusted he hadn't misspoken with what he was trying to communicate. He had no doubt about the due diligence of the new members. The statement he was trying to make was the deliberative process in getting to a result you should think twice in the presence of a forum of the members. So to that extent he again advocated that there should be some discussion about all of this. Regarding Spitzer's comments, to the extent that you had disagreements with the Town Manager over decisions that he had made and things you disagree with, it begs the question of whether or not it was said to have talked to him about those things and whether the vetting process is part of that. Disagreement opportunity would have been explained, opportunity for me to have asked questions to understand. Same with the Vice Mayor's comments I think you identified a number of issues here. One would hope that the Town Manager would have an opportunity to get the specifics from the generalities of some of the comments. He understands that management changes all the time but it should be done fairly with due process. That is what they are asking for.

Trenk – Asked the Town's legal counsel, could you confirm for Town Council that there is no need to have cause to terminate this contract; that the Town Manager serves at the will of the Town Council?

Bisman agreed.

Trenk appreciated the Counselor's comments he would be more than happy to disclose the specifics. He pointed out some of them: The public works project is the Neary Water Tank, which cost the Town 1.2 Million. He stated they don't need cause; he was here to try to negotiate a solution whereby they could all work together and there would be some checks and balances to ensure that this type of behavior did not continue going forward at this next Council's term so they can accomplish the objectives that all of them as individuals set out to do on behalf of the citizens and what they believe to be their interest and as reflected in the election result. But with the contract as it is currently written it really has no teeth. There is no accountability; there are 90 days and a giant severance payment and things of this nature written into the Town Manager's contract that really made it difficult to work together going forward. So the purpose of this meeting was to try to bring that type of stuff in. To make the assumption that it was predetermined what we were going to do here this evening is a disservice to the entire community and perhaps your client.

Durkin stated this is supposed to be discussions among Council folks. He wanted to assure the rest of the Council that he had done much due diligence and as **Trenk** pointed out...we don't need cause and yes there is benefit in looking to see if a group of people can work together. However we also need to be mindful of this: it's very hard to change 17 years of bad behavior. He is not willing to risk the future of this Town, Council members and Mayor on taking a chance that we can change bad behavior. That's not why he was elected. The people of Cave Creek have put their trust in a new Council and he is intending to behave with only one thing in mind and that is looking out for the best interest of the citizens of Cave Creek and he has satisfied himself that he cannot do that going forward with this Town Manager. He creates too much of a risk for success.

Spitzer had nothing to say.

McGuire stated he looked forward to getting together with all members of Council to establish new priorities. We have not done that. Regardless of whether you have reasons or cause here as required he felt that it was owed to any employee to give him a chance to work under the guidance of the new council. If we go the route of taking action without both discussing among ourselves where we as a council want to go, and not working with the Town Manager clearly that is a violation of good managerial skill.

Trenk asked **McGuire** if he would be comfortable working with a direct report responsible for implementing your policy, who you know in the past had deliberately circumvented your efforts to prevent them from going to fruition. Would you be comfortable in that position?

McGuire felt...

Trenk – It's a yes or no question.

McGuire refused to take a yes or no question.

Trenk – Let's go down the line. **Durkin** replied absolutely not; **Spitzer** replied no; **Mr. Mayor** responded that he is in that situation daily in corporate life and they are just challenges to him. **Bunch** replied not completely-no; **Monachino** replied he would not.

Trenk stated that he was trying to engage the rest of the council and asked **McGuire** again. He responded he would not.

Francia asked **Monachino** if he had anything to add who answered no.

Bunch stated that it was quite obvious that as a Council they have the power to get done what we need doing and he didn't think they need the big change right away.

PUBLIC COMMENT

Bonnett stated there should be an evaluation on or before March 31st of every year. So if there are concerns about the performance of the Town Manager that would seem to be the appropriate place to address it. In a performance evaluation with a performance to be approved with a plan to look at the issues and address them. If you don't here is what will happen. His understanding is that has not taken place so to the extent that there is a mechanism to give the Town Manager an

opportunity to understand fully what you expect of him and to comply with that. That is the mechanism that is available on any ordinance in a contract to do that.

PUBLIC COMMENT

Francia announced the 3-minute rule and asked folks to be respectful of what others may say whether they agree with them or disagree.

Marc Peagler, 6245 E. Cave Creek Road stated that he has worked with every Town Manager for the last 30 years. With towns and cities across the country going bankrupt, Cave Creek has a seven million dollar surplus. Working with the Town Manager is always a give and take. He felt Abujbarah had done a good job. He does like the evaluation part.

Jennie Curé, 5440 Seven Palms Drive, Cave Creek addressed the matter of giving the Town Manager his contract. She stated her opinion based on the past performance of the Town Manager. She had issues with installing an earth quake proof water tank and problems with the water treatment plant. She spoke of unwise decisions. She recommended the Town Manager's contract be terminated immediately with cause, the cause to remain unspecified.

Gilbert Lopez, 5992 E. Red Dog Dr. former Council member and past V. Mayor. He spoke of various periods of the Town Manager's tenor and some of the ways he felt the Town Manager had not always acted wisely. He urged Council to terminate immediately.

Grace Meeth, 6435 E. Arroyo Road former Vice Mayor and Council member. The Town Manager's contract requires being a member of the International City, County Management Association and states that he is subject to the twelve pennants of the ICNA ethics. She reported various aspects of those and stated the Town Manager's actions were in direct conflict with the ICNA Code ethics tenant #5. She felt it was time to change the Town Manager.

Bill Allen, 38914 73rd Road spoke about trust and gave an example of breach of trust. He expressed the need of a change for a Town Manager.

Jerry Freeman, 4856 E. Morning Star expressed problems regarding paving of certain streets and roads. He has lost confidence in the Town Manager and this is the time for him to go.

Kerry Smith, 7265 Continental Mountain Est. Dr. commented on trust in city government, honest relationship, mutual obligation that each person involved in the bonds of trust will not act to diminish the standing or the ability of the other person to affectively perform.

Rob Papinean, 35414 N. 56th Street stated he had stood before in support of the Town Manager and the record has stood for itself. The world is give and take. This man has done a lot for this Town and has instituted the South part of the Cave Creek Preservation as well as Spur Cross which was paid off sooner. To get rid of this gentleman's contract before giving him a chance is a distrust and a disgrace and feels this was a slate decision.

Bob Williams, 36190 N. Creek View Lane stated that the new Council is out of step to start out with. This Town Manager has done more for this Town than any of them individually or

collectively ever. He recruited, developed and retained this wonderful professional staff. No one was able to do that before. He always did those things that he felt were in the best interest of the Town, not himself. He knows the Town, the issues, the governments, and he has public support. He has more value to the Town than the Council and he urged Council to retain this man and go onward.

Scott Dahne, 5924 E Mountain Reserve spoke of his time on the White Paper Committees and Open Meeting Laws. He commented on an email that was circulated to the Sonoran News and throughout the town. The Town Manager's actions were to discredit those who had served on the committee because of things they had uncovered in the audit committee. He lost all confidence in the Town Manager and the Council performances of public trust.

George Ross, Cave Creek spoke of trust between leadership and the management levels of that organization. He spoke of the need to be debt free to retain Cave Creek's rural environment.

Jay Williams, 6231 E. Mark Way Unit 31 has worked with the Town in various capacities of the years and recognized that the Town Manager was a master he could learn from. He is truly brilliant and knows how to government. We have enjoyed a great deal of brilliance and fore thought in planning for the future. If we have a debt issue it's because people voted for the Town Manager to do those things. He continues to believe that this Town Manager can get the money and the payment to get the land that we've set aside with the State Land Department and has continued to show that the debt we are carrying is not bad and we can deal with it. If the new Council members actually stand behind what they are saying about fiscal responsibility and will work with the man who knows how to get things done, we will be on the right track.

John Ford, 37403 N. Kohuana Place pointed out that the Council is here to represent the Town. He felt they need time to look at the Town Manager about making a decision that they can't make in one week after being sworn into office. He has seen for many years that we have a staff that is really good and the reason is because of our Town Manager. They support him. He cares about the Town. The Council owes it to the citizens to at least evaluate before they make a decision. There is a decision already made and that is wrong.

Shelley Anderson, 70245 E. Rockaway Hills urged Council to consider this town and its citizens in their decision making. You are embarking on possibly extensive solution which could be very stimulating and exciting. But consider what impact it will have on the Town when you make a decision. If the Town Manager is let go it will cost the town 8 months of his salary; if he were to stay he'd have another year. What is the difference? She felt that he has shown that he has greater value in his knowledge and things he has done for the Town.

Todd Wilson, 50th Street & Carefree Highway. While he hasn't always agreed with everything the Town Manager has done, he has done much good. As a business person for 38 years he thinks the Town Manager should be given a chance if corrected action is needed. It is only prudent to give him a chance to work with the new Council.

Michael Baliman, 5613 E. Morning Star Road brought up issues of the Morning Star paving issue. He supported dismissing the Town Manager.

Mike Noonan 5920 Gunsight stated she has heard that policies were from the Council for circumvention; things that the Council can take care of. You do lose some knowledge when you release him to start over. Working with someone and giving direction and seeing if you can work with them and you need to do it in a fair and open manner so you aren't faced with an angry group of folks who are divided. Please do what is right for the Town, be open and transparent.

Mark Bowman, 7234 E. Cave Creek Road. One of the jobs for the Town Manager is to promote businesses in Cave Creek; to support all businesses fairly with an even hand and not bias. It is his job to see that all are treated fairly and equally. When it ceases to be the case, a change is in order. He strongly urged the Council to ensure an even playing field for all businesses and to terminate the Town Manager's contract.

Terry Smith, P O Box 4884 supports the Town Manager. He was surprised that decisions had already been made as stated by the new Council members. We need to stop and look. He is disappointed in Trenk because in the debates he stated that if he was on Council that the Town Manager would work over him and not run the Council. Tonight he has spoken that he has issues because of something with the previous administration when he was on the Council. The whole Town needs to look at what has happened in the four years...Spur Cross, worked that through State and County...land trade with State Land Department, no other town in this State has done anything close to what Cave Creek has. That was negotiation made by our Town Manager, Abujbarah. Look at the recession we just went through where states and towns are going through financial crisis. Things that needed to be cut, he cut staff, he cut the Town Budget and made our town profitable and we have never been late on any payment since he has been our Town Manager. Our town has surpluses but he is not going to make everybody happy. He asked Mr. Trenk to do as he said he would while candidating for the job...make the Town Manager do your bidding. Set your agenda. Abujbarah knows how to make it happen...give the man a chance.

Nancy R. Bayfield, 6637 E. Azure Hills Drive gave her history. She spoke about the Water Company and that the town had to take over because of the pipes being buried so shallowly in their early days when Cave Creek was just a little desert village. She has seen many changes in the town and in town managers. This Town Manager has been very courteous and extremely helpful. She urged the Council to retain him as Town Manager.

Steve LaMar -- If council sits there and thinks they have convinced the folks in this room that many of your supporters don't just personally dislike the Town Manager and that it is the motive and part of the engine that helped you get elected...if you think that for the people in this room it is not true, he suggests you are simply mistaken. Because it just simply is true. If you look at some of the people who have come up this evening it's because something went wrong and they didn't like it and they are going to get even and they want Abujbarah gone. They waited around for years to have an opportunity to get back at him for the grudge they've had. But set that aside...if you are going to govern now you have to recognize that you have to decide whether you are going to play that ball and give people who supported you for a personal grudge against him what they want. Or whether you are going to step up and do what is best for the Town. If

you do your due diligence well, and you've done your due diligence with folks that don't like him, you are getting information even though you weren't involved personally because you were busy with your job. When you look objectively at the good things that have happened in this Town under his management you owe him at least to try to work out whether your vision and his vision can meet. Do not think you know all the answers about what is good for this town. It is give and take. We are 7 million dollars in surplus, we have an award-winning water system, we have an economic engine that's good for this Town, and we are going to have money to make this town better. He is happy that they have signed the conclusion of the annexation and looks forward to the White Paper and continuing the annexation. Spend your energy thinking about the budget, about getting together and really vetting what you see as your vision and meld it together and whether that can be something you can tweak and make this town better for the few years you have on this job.

Bob Moore, 6942 E. Stevens Road. We have heard this evening "do what is right, what is fair, we owe, give the man a chance." He spoke of lack of training in the town manager, the lack of current financial information on a monthly basis. A manager manages, not just negotiates. He had a chance for a decade.

Zeita Pochos, 35414 N. 56th Street asked what all the termination stuff was about. Can't you seem to be able to work with our Town Manager to give him a chance? It sounds like a personal vendetta by our Vice Mayor. Usama Abujbarah has always been for Cave Creek since 1999. He's a great Town Manager and has been for the 17 years that she has lived here. Talk about his mistakes...he is human...all of us make mistakes so to the Council...you need to talk to him about this as if he were one of your employees, not all of a sudden you take over and get rid of him. Have you thought about what this will cost the town in legal fees, and where do you need a manager for what you pay him now? Think about what his salary is and where you will find somebody...it will cost more for that. We are in the black now, why do you want to spend our money?

Janet Mohr, spoke on the reason why the town wanted to buy the water company and it was because it was being threatened for development and it didn't work. Keeping Cave Creek, Cave Creek...we forget that our founder is not going to the Tonto National Forest and there is a lot of county property back there that could be threatened to be developed. There is now water pressure in the hydrants because of the updated water system. As far as being debt free; the Town is not going to be debt free, we want to be sustainable and that's why there is a 7 million dollar surplus. She would like to see the Council after they are into the job and learn it to see what is going on. Get their feet a little wet before they make a decision of this magnitude. After that you might still see things as now and then you might want to review the contract but there is a lot to know and learn in this position. You were hired for the people. A statement was made that you can't do the vision of the Council. She doesn't want them to do the Council's vision, she wants them to do what is best for the Town and keep Cave Creek, Cave Creek. She wants them to be here for the people. What is it that you want to do that you cannot do with this man in this position?

Dick Esser 5423 New River Road. If you fire him tonight it will be a knee-jerk reaction. All these years he has tried to eliminate the politics. The Mayor has been his friend and has allowed

him to do many things and his accomplishments probably stand for themselves. If we have to, in December, you will hear that again. For several years the Town Manager and he did not get along. He did a written evaluation of the man and cited various areas where he needed improvement, in areas where he needed immediate attention. They finally learned to live together. He spoke of the town manager where he took action quickly and appropriately. Everything...the plusses, the negatives, character defects, and the improvements in his performance have been said tonight. If you fire him tonight that would be a Town too tough to govern. You must give him a chance.

Ralph Mozilo thought there was a sense of history that has to go back here. It breaks his heart to see this Town torn apart. It is such a great town to be torn apart by division. He brought some town history. In 1999 when he was first elected to Town Council, we had a town manager whose contract was coming up within 2 months and they made a decision not to renew that contract because she didn't meet the needs. So the short-term is not an argument. We got rid of the town attorney and then had to go on a search. Abujbarah was the Town Assistant Planner at the time, he asked to be considered to be the acting town manager and in the financial position the town was in it was the expedient thing to do. They went on a national search for a new town manager; he chaired that committee of 7 people. They came up with three candidates and one of them was Abujbarah. People wanted him to be considered without going through a search and he convinced the Council to go through the search as a best interest of the citizens. He was not his first choice. The vote was 3 to 3 and he was the deciding vote to put him there only because he had made a commitment to Lopez that he would put him there. There are many stories that are a credit to him. It is the council's decision to make. Make the decision here why he has conducted himself in ways that were not pleasing to everybody but it was a lack of leadership on the Town Council. We have not had a strong town Council that has set the policy to tell him what he has to do and make sure he toes the line. The responsibility is the Council's as the elected officials. He urged the Council to make sure they didn't divide this town.

Steve Snyder, 7075 E. Anaram Drive spoke against the Town Manager, saying he had divided the Town. The decision is up to the newly elected Council members and urged them to bring unity to this community.

PUBLIC COMMENT CLOSED

COUNCIL COMMENTS

Francia noted that 36 citizens had spoken; 15 were for the Town Manager and 11 were against him.

Trenk thanked all for speaking and stated that all the people loved this community with differing opinions of how to bring unity. This newly elected Council has a set of objectives which the majority of the community has endorsed by placing them on the Council. He stated they would not be able to be united as long as there is no trust in Town Hall.

M/Trenk, S/Durkin to remove **Usama Abujbarah** as Town Manager pursuant to Section 31.25 after the Town Creek Code and Section 3.1 of the August 6, 2012 employment

agreement between the Town of Cave Creek and Usama Abujbarah as follows: 1) to immediately deliver written notice to intend to terminate the employment of the Town Manager Usama Abujbarah with the termination date of September 9, 2013;

2) to immediately relieve Mr. Abujbarah from duties as Town Manager and re-assign him to a limited special assignment for the purpose of facilitating the transition to his successor as needed from off-site effectively immediately for the duration of his employment until the termination date;

3) continue to pay Mr. Abujbarah regular pay and benefits through the termination date;

4) pay Mr. Abujbarah a lump sum severance pay equivalent to five month's base salary as defined in the employment agreement conditioned on Mr. Abujbarah's execution of a release as provided in Sections 3.1c and d of the employment agreement together with all accrued vacation time and one-third of his accrued sick leave not used on the termination date;

5) request that the Town Manager return all of his property in accordance with Section 8 of the employment agreement no later than noon tomorrow; and

6) to agendize a Notice of Special Meeting to be held no later than June 12, 2013 at 7:00 p.m. for the purpose of appointing an acting Town Manager to perform the powers and duties of the offices of Town Manager in accordance with Section 31.25(E)(2) of the Town of Cave Creek Code find through an independent contract's agreement whereby the Town will compensate the independent contractor at a rate not to exceed a total compensation paid to the out-going Town Manager beginning no later than June 17th, 2013 for a term not to exceed 6.5 months with the following directives: to carry out the duties of the Town Manager as described in the Cave Creek Town Code Section 31.25;

2) Oversee the selection of independent third party for the purpose of conducting an audit of the funds of the Town of Cave Creek with results to be presented to the Council no later than December 1, 2013; and

3) to oversee a process of selecting a new permanent Town Manager for the Town of Cave Creek prior to the expiration of the Acting Town Manager's intern contract.

Trenk stated he had suggestions as to whom they might appoint as the Acting Town Manager and he would like that to be noted on the Agenda for June 12, 2013, as Rodney Glassman.

Trenk stated he spoke his piece before he made the motion.

Durkin assured the citizens of Cave Creek that the decisions he had made since deciding to run for office and the future decisions are his. The town people elected him to do the Town's business and he must listen to their voice and he considers it his job. Trust is vitally important to him.

Spitzer stated he spoke and listened to many of the Cave Creek folks while he campaigned. Most believed they had problems with the actions of the Town Manager who did not act fairly to businesses and the people. Spitzer felt this had been an on-going problem for a number of years.

McGuire stated he looked forward to working with this council. They have a great variety of ideas about how one works with Usama. He felt they needed to come to some conclusions regarding how well they can work with him. We cannot do it at this time. That may be because

of Usama; it may be because of the Council, but we need to come together before we can make competent decisions regarding his employment.

Monachino thanked the people for coming and for getting involved. Once this Council knows what the citizens want, what their support is, what their complaints are, he felt this was a wonderful example of democracy.

Bunch stated that he sees this as a major failure of this new Council. They had an opportunity as a group of more than four to have some changes made in the way things are done and carried out. To demand that we get both sides of the information in the packet, to demand that there is no favoritism played, to demand all those things have teeth because there aren't enough people here to make those decisions. If a couple were to go to a Judge after being married for seven days and say, "Judge our marriage is irretrievably broken," he would laugh at them and send them to counseling. Bunch stated he only wished that they had had that opportunity here tonight.

Francia quoted "The quality of a journey is determined by the first step." Having served on this Council for a long time he sensed where this vote was going to go tonight and this will determine the quality of this Council. He didn't feel it was a good first step but it is the way this Council wishes to proceed. The reason he cannot support this motion is: a Council is responsible to the citizens and none of us is going to be able to sit up here in controversial votes and make everyone happy. By the same token, the Council should not take steps that cause harm to the community and from what he heard tonight...passing this motion will do that.

M/C 4-3 by voice call with McGuire, Bunch, and Francia voting nay.

M/C TO ADJOURN.

SUBMITTED BY:


Carrie A. Dyrek
Town Clerk

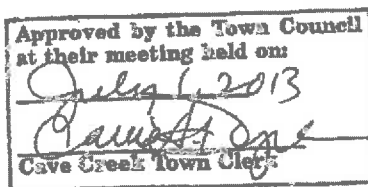
APPROVED BY:


Vincent Francia
Mayor

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the Minutes of the Regular Session of the Town Council of Cave Creek held on the 10th day of June 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 1 day of July 2013



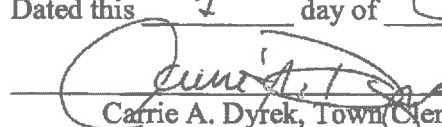

Carrie A. Dyrek, Town Clerk

EXHIBIT 6

Motion to Remove Usama Abujbarah as Town Manager Pursuant to Section 31.25(F) of the Town of Cave Creek Code and Section 3.1 of the August 6, 2012 Employment Agreement between the Town of Cave Creek and Mr. Abujbarah as follows (1) immediately deliver written notice of ^{intent to terminate} termination of employment to Town Manager Usama Abujbarah with a termination date of September 9, 2013; (2) immediately ^{relieve} ~~suspend~~ Mr. Abujbarah from duties as Town Manager and re-assign him to a limited special assignment for the purpose of facilitating the transition of his successor as needed from off-site, effective immediately for the duration of his employment; (3) continue to pay Mr. Abujbarah regular pay and benefits through the termination date; (4) pay Mr. Abujbarah a lump sum severance payment equivalent to five months base salary, as defined in the Employment Agreement, conditioned on Mr. Abujbarah's execution of a release as provided in Sections 3.1 (c) and (d) of the Employment Agreement together with all accrued vacation and one-third of his accrued sick leave not used on the termination date; and (5) agendize and notice a special meeting to be held no later than June 12, 2013 at 7:00pm for the purpose of appointing Rodney Glassman as Acting Town Manager to perform the Powers and Duties of the Office of Town Manager in accordance with Section 31.25(E)(2) of the Cave Creek Town Code, by and through an independent contractor agreement, whereby the Town will compensate the independent contractor at a rate not to exceed the total compensation paid to the outgoing Town Manager, beginning June 17, 2013 for a term not to exceed 6.5 months with the following directives:

1. To carry out the duties of the Town Manager as described in Cave Creek Town Code Section 31.25(H).
2. Oversee the selection of an independent third party for the purpose of conducting an audit of the funds of the Town of Cave Creek, with results to be presented to Council no later than December 1, 2013
3. Oversee a process of selecting a new permanent Town Manager for the Town of Cave Creek prior to the expiration of the Acting Town Manager's interim contract.

→ (5) Request Mr. Abujbarah return the town's property no later than noon tomorrow pursuant to Section 8

EXHIBIT 7

From: JPHoepner@aol.com
Date: September 14, 2013, 3:26:28 PM MST
To: usama1120@gmail.com, rbwcavcreek@gmail.com, rwrlamar@gmail.com
Subject: Fwd: Cave Creek Manager

FYI - From the Rose Law server. Note the highlighted paragraph - John

From: ATrenk@roselawgroup.com
To: JPHoepner@aol.com
Sent: 6/11/2013 9:33:56 P.M. US Mountain Standard Time
Subj: re: Cave Creek Manager

Mr. Hoepner,

Thank you for your email. I can certainly appreciate your position, but inasmuch I staunchly disagree. The division in this Town was not created by our action last night. It has been visible for many months, and bubbling under the surface of our community for much longer. Our action was the first step in clearing a path that will allow the town to realize its common vision, as I laid out in my campaign, and may even be an opportunity to bridge that gap.

It is a sad state of affairs that Mr. Abujbarah may have been the most competent to have occupied the position of Town Manager in Cave Creek. None of the below outlined points were detailed as powers or duties of the Town Manager in his contract or in the town code, and yet he over the course years, but all in recent memory, engaged in this behavior in his capacity as Manager without ever being held accountable. It cost the town MILLIONS, it hurt people, and these actions together with the toxic pen of his close friend were the source of the division.

1. To be implicit in the deliberate dissemination of inaccurate information to the public and/or to conceal public information or information about government activities from the public
2. To deliberately engage in the selective enforcement of and to manipulate interpretations of ordinances in order to impact targeted individuals because their politics disagree with theirs or to protect those who they were politically aligned
3. To unilaterally place items on consent agenda knowing the council would not engage in discussion of said item when the issue knowingly had the potential to expose the town to liability as a favor to a friend
4. To unilaterally decide where to construct town public works projects without oversight or survey, resulting in developments encroaching on private property costing the town millions
5. To unilaterally amend policy documents submitted to the County on behalf of the Town
6. To direct legal counsel with regards to contract/statutory construction and interpretation

7. To solicit signatures on petitions from friends in an effort to create the aura of support for new policies and to call a special emergency meeting in furtherance of those policies in an effort to sway council votes and public opinion

8. To solicit public participation from friends and leak incomplete proposals in an effort to sway public opinion against proposed policies

9. To provide unsolicited disclosures of private information about citizens discovered in the course of the Town's operations with media outlets as political payback

If only previous administrations had the fortitude to act in the best interest of the community and reined in the manager, instead of hiding from the truth out fear for how they would be treated in the Sonoran News, maybe Mr. Abujbarah's performance would have been better. However, absent any offer from Mr. Abujbarah to amend his contract in a way that he could be held accountable there was no way I could work with him to achieve the necessary objectives. I deliberately did not propose terms, because amending his contract would have to be a bilateral action.

Your personal belief that the town will be sued is an irrational one. Mr. Abujbarah was employed at will, and his contract spells out the terms of early termination. Moreover in order to collect his severance he needs to sign a release, disqualifying any potential law suit. Thus he must choose between a meritless lawsuit and a golden parachute packed for him by previous administrations.

As a conservative, I also appreciate your distaste for the selection of Rodney Glassman to serve as an interim manager, however I can assure it is precisely his having been publicly scrutinized during his race against McCain that makes him uniquely qualified to serve in our town, where the dominant media outlet is as yellow as deli mustard and will undoubtedly stop at nothing to tarnish whoever Abujbarah's successor is. I would encourage you to put aside partisanship and consider that Mr. Glassman will hopefully be hired as a professional, and his resume and letters of recommendation indicate he will perform as such. It is to be a short term engagement, and I don't intend to ask the Council to add singing to his list of duties.

Our action last night is not one to be taken lightly. But it was necessary in order to forge ahead. If that means I have to pay a political price for causing "division" then so be it. I would rather know I tried to the right thing by acting to give this council the highest probability of success then sacrifice my self-respect and my principles even if it means facing a recall. After all, I presume that is why you sent me to this office.

I always welcome an inquiry, even if I disagree.

Best,

Adam Trenk

ROSE | LAW GROUP
PC

6613 N Scottsdale Road, Suite 200
Scottsdale Arizona 85250
Direct: 480.240.5647
Fax: 480.505.3925
Mobile: 602.402.3335

EXHIBIT 8

DICKINSON WRIGHT
MARISCAL WEEKS

2901 NORTH CENTRAL AVENUE, SUITE 200
PHOENIX, AZ 85012-2705
TELEPHONE: (602) 285-5000
FACSIMILE: (602) 285-5100
<http://www.dickinsonwright.com>

ANNE L. TIFFEN
ATiffen@dickinsonwright.com
(602) 285-5019

June 25, 2013

RECEIVED

JUN 26 2013

MARTIN & BONNETT

Daniel Bonnett
Martin & Bonnett, P.L.L.C.
1850 N. Central Avenue, Suite 2010
Phoenix, AZ 85004

Re: Notice of Intent to Terminate Town Manager of Cave Creek - Usama Abujbarah

Dear Mr. Bonnett:

On behalf of the Town of Cave Creek, this letter responds to your letter dated June 18, 2013. For the reasons that follow (among others), your client Usama Abujbarah has absolutely no basis on which to challenge the termination, by majority vote of the Town Council on June 10, 2013, of his Employment Agreement dated August 6, 2012 (the "Agreement") and his employment as Town Manager of the Town of Cave Creek ("Town"). Any claim asserted against the Town will be vigorously defended and the Town expressly reserves the right to assert all counterclaims are the claims that may be available to it.

Calling of Special Meeting. During the Special Meeting of June 10, 2013 (the "Meeting"), Town Mayor Vincent Francia unequivocally declared that he called the Meeting. Section 30.35(B) of the Cave Creek Town Code (the "Code") explicitly permits the Mayor to call a Special Meeting. You have (properly) acknowledged that the recording of the Meeting is a matter of public record (*see* the second paragraph of your letter of June 18, 2013), and thus Mayor Francia's unequivocal declaration that he called the Meeting is a clear public record establishing that the Meeting was properly called. No further confirmation of this fact is necessary or appropriate. Nor does it matter whether Vice Mayor Trenk or anyone else requested that the Mayor call the Meeting. Code section 30.35(B) does not restrict or specify the reasons for which the Mayor may call a Special Meeting, nor prohibit him from calling a Special Meeting just because someone else has requested him to do so. Your first purported concern is thus entirely unfounded.

Alleged Open Meeting Law violation. Your suggestion that Vice Mayor Trenk's motion made at the Meeting "must have" been the result of "discussion and consensus" among Councilmembers simply because no amendments were offered during the Meeting and discussion was limited to the topic of the termination of Mr. Abujbarah is both illogical and baseless. The circumstances you describe simply do not constitute, even remotely, evidence of any violation of the Open Meeting Law. We are unaware of any such evidence; if you are aware

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of further "facts," beyond those stated in your letter, indicating a violation of the Open Meeting Law, please provide those alleged facts to us immediately. The Town takes quite seriously your accusation of concerted, illegal activity. We are, however, aware of no factual support for this charge.

"Single subject rule." There is no law or other applicable authority limiting Council motions to a single subject, and your letter virtually admits as much. The case you cite in order to try to conjure such a requirement, *Bentley v. Bldg. Our Future*, 217 Ariz. 265, 172 P.3d 860 (App. 2007), is inapposite. That case involved a statute requiring political action committees to identify the source of their funding for advertisements when the contents were more than fifty percent devoted to one or more ballot propositions or measures on the same subject. Your contention that *Bentley* "explain[s] the rationale behind motions . . . being limited to a single issue" misrepresents the referenced portion of the opinion in *Bentley* (and extends it, without basis, to motions made at a municipal Council meeting). In order to support its conclusion that "same subject" in the referenced statute meant identical subjects, the court discussed Article 21, § 1 of the Arizona Constitution, which involves voting on amendments to the Constitution (not Town Council motions) and requires, "If more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." Even if the "purpose" of this single subject rule for constitutional amendments might justify the enactment of a similar rule for Town Council motions, there is no such rule.

Moreover, as the discussion in *Bentley* makes clear, even if there were a "single subject rule" applicable to motions of Council, the motion presented at the Meeting would satisfy the criteria for a "single subject." *Bentley* holds:

Determining whether a proposition complies with the single amendment rule involves a determination of whether its provisions are sufficiently related to a common purpose or principle so that the proposal constitutes a consistent and workable whole on the general topic so that all provisions should stand or fall as a whole. Applying the test requires a two-part analysis: (1) whether the provisions are topically related, i.e., they embrace the same general topic; and (2) the provisions are sufficiently interrelated so as to form a consistent and workable proposition that logically should stand or fall as a whole.

217 Ariz. at 272, 172 P.3d at 867. All components of the motion presented at the Meeting were "topically related," in that they all pertained to the termination and replacement of the Town Manager; and they were "sufficiently interrelated so as to form a consistent and workable proposition that logically should stand or fall as a whole." See *Kerby v. Luhrs*, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934), where the Court stated,

If the different changes contained in the proposed amendment [to the Constitution] all cover matters necessary to be dealt with in some manner, in

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order that the Constitution, as amended, shall constitute a consistent and workable whole on the general topic embraced in that part which is amended, and if, logically speaking, they should stand or fall as a whole, then there is but one amendment submitted.

This language applies precisely to the motion that was presented at the Meeting. Further, no member of the Council requested that the components be segregated for separate voting. Your third purported concern is thus unfounded.

Agenda for Special Meeting. For the same reasons, the agenda listing various possible actions in respect to the Town Manager contemplated and embraced related matters, including those specifically listed in the motion made at the Special Meeting. With specific reference to that part of the motion calling for an independent audit of Town funds, we infer from your statement of concern that your client is concerned about the results of such an audit, but it nonetheless obviously stems from the same concerns about the job performance of the Town Manager that led to the majority vote to terminate his employment. Based upon the action of the Town Council we assume that audit will occur. In any event, the Town Council will give consideration to taking the appropriate steps to ratify all components of the motion presented at the Special Meeting, even though it is not legally required to do so. As it was clear from the discussion at the special meeting that the majority of the Council have in fact lost confidence in Mr. Abujbarah, ratification (if pursued) will no doubt be promptly approved. In any event, your fourth purported concern is unfounded.

Continuing duties and return of property. We do not understand your contentions with regard to this (fifth) point. It goes without saying that Mr. Abujbarah is required by law to return property that does not belong to him. Moreover, the Town has the right under paragraph 2.1 of the Agreement to assign reasonable duties and responsibilities to Mr. Abujbarah, without any limitation as to what those duties and responsibilities may be. The termination date is not until September 9, 2013, and Mr. Abujbarah continues to be an employee until that date and is therefore subject to that provision in his Agreement empowering the Town Council to assign certain duties and responsibilities. At present, it is anticipated that his duties and responsibilities will consist solely of assisting with the transition to an Acting and then Interim Town Manager. We believe that Mr. Abujbarah well understands who he should report to, but we will nonetheless clarify that Mr. Abujbarah should report to the Acting Town Manager and, subsequently, to the Interim Town Manager (if one is appointed); or, if for some reason he is uncomfortable reporting to that person, then to the Mayor and Council. Notwithstanding your expression of concern about who is currently "in charge" of Town operations, which is appreciated, it is clearly the Acting Manager and will be, upon appointment, the Interim Manager. Your fifth purported concern is unfounded.

Continuing duties and responsibilities. The same arguments defeat your next (sixth) point. Again, Mr. Abujbarah remains an employee until September 9, 2013 and therefore remains subject to that provision in his Agreement that the Town Council may assign him duties

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and responsibilities as it sees fit. If he wishes to voluntarily resign his employment prior to the termination date, he is free to do so. Further, we are not aware of any specific duty or responsibility that has been assigned to Mr. Abujbarah as of this date. Your sixth purported concern is thus unfounded.

First Amendment. At the Special Meeting, Vice Mayor Trenk described conduct by Mr. Abujbarah that, among other things, directly undermined existing and potential Council policies and confidence. This conduct directly violated Mr. Abujbarah's explicit duty to perform "all acts necessary and proper to obtain the Town's policy objectives as established from time to time by the Town Council" Agreement, paragraph 2.1. Even if Mr. Abujbarah undermined Town Council policies by speech or association, his conduct does not enjoy protection under the First Amendment for one or both of two reasons.

First, the specific concerns enumerated by the Vice Mayor at the Special Meeting all related to actions taken by Mr. Abujbarah in his official capacity as Town Manager, and are therefore not protected by the First Amendment. *See, e.g., Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951 (2006).

Second, even if it could conceivably be said that Mr. Abujbarah was acting in his capacity as a private citizen, nonetheless his conduct in directly undermining Town Council policies satisfies the *Pickering* balancing test and would justify the Town in terminating his appointment (if any justification was required). *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572-73, 88 S. Ct. 1731, 1737 (1968) (speech and expression by public employee in his capacity as a citizen are protected under the First Amendment only if they "are neither shown nor can be presumed to have in any way either impeded the [employee's] proper performance of his daily duties . . . or to have interfered with the regular operation of the [employer] generally." *Accord Wheaton v. Webb-Petett*, 931 F.2d 613 (9th Cir. 1991) (affirming dismissal of First Amendment claims by terminated state employee because the speech for which he had been dismissed had the potential to endanger his employer's implementation of its policies); *Morales v. Stierheim*, 848 F.2d 1145 (11th Cir. 1988) (reversing judgment in favor of terminated County planner, because the speech for which plaintiff was terminated frustrated the pursuit of County goals, aggravated existing mistrust between plaintiff and his chief contact on the county board, and violated his duties).

Your decision to attempt to support your argument on this point with a citation to a case involving the Fourth Amendment and due process, rather than any case applying the First Amendment, indicates either that you overlooked First Amendment jurisprudence pertaining to public employment, or that you knew that such jurisprudence was contrary to your position.

If there are other "comments" that you are referring to by Vice Mayor Trenk at the Special Meeting, that you believe implicate the First Amendment despite the foregoing authority, please advise us immediately. Otherwise, your seventh purported concern is also unfounded.

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In addition to all of the foregoing, the Town Council has discovered, subsequent to the Special Meeting on June 10, 2012, that Mr. Abujbarah, in contravention of his authority and to the extreme detriment of the Town, purported to cancel the "Taste of Cave Creek" event. If the majority of the Town Council had not lost confidence in Mr. Abujbarah before this remarkable breach of his duties and obligations, it surely would have upon learning of this unauthorized action.

Please be advised that the service of a statutory notice of claim, as referenced in your letter, as well as the filing of litigation, as also referenced in your letter, may be regarded as an anticipatory repudiation of your client's obligation, under paragraphs 3.1(c) and (d), to sign a full release of all claims in form and content acceptable to the Town as a condition to receiving severance pay, and will accordingly vitiate any obligation on the part of the Town to pay any severance pay under paragraph 3.1(b) of the Agreement. Obviously, the intent of paragraphs 3.1(c) and (d) of the Agreement was to avoid having the Town both pay severance pay and waste financial and personnel resources to respond to a claim or lawsuit from Mr. Abujbarah. That purpose has already been frustrated with the delivery of, and necessity to respond to, your recent letters. That purpose will be completely frustrated, and the obligation to pay severance may be deemed completely excused, if your client files a notice of claim or initiates any other action.

Along the same lines, as noted above, the Town reserves all of its rights that it may have against Mr. Abujbarah for any of his acts or omissions during his tenure as Town Manager, including but not limited to anything that may be revealed by an independent audit.

We have been authorized by the Town to meet and speak with you further about these matters if you deem it necessary or appropriate. We will anticipate hearing from you after you have had a chance to consider this correspondence.

Very truly yours,

DICKINSON WRIGHT/MARISCAL WEEKS

By Anne L. Tiffen



ALT:jmc

PHOENIX 53601-1 69272v1

EXHIBIT 9

Usama Abujbarah's Estimated Economic and Non-Economic Damages

Lost Compensation and Benefits from 9/9/2013 – 8/4/2014

Gross wages per Employment Agreement	\$112,961.18
Value of Medical Benefits	\$ 18,557.00
Value of Dental (annualized)	\$ 1,241.90
Value of Vision (annualized)	\$ 190.63
Value of Basic Life/AD & D (annualized)	\$ 1,458.65
Value of Automobile Allowance	<u>\$ 5,500.00</u>
Total	\$139,909.36

In addition, Claimant's reputation and character have been severely injured so that he will not be able to obtain substantially similar employment as a town or city manager or similar position in the public or private sector. Consequently, he will suffer future lost wages and benefits from and after August 4, 2014 in an amount no less than \$180,000 annual until age 66 which is four additional years of future lost wages totaling \$720,000.

In addition, Claimant is a participant in the Arizona State Retirement System ("ASRS"). Based upon available information, Claimant estimates that had he not been terminated but allowed to remain in his position as Town Manager for the duration of his Employment Agreement (August 5, 2014), his monthly retirement benefit at age 62 would be \$3,427 and the surviving spouse benefit would be \$1,713 per month. Given his current status, however, as being terminated effective September 9, 2013, his monthly retirement benefit at age 61 using the ASRS calculations will be \$3,194 and the surviving spouse benefit will be \$1,597 per month. Using current mortality tables to determine life expectancy and after discounting to present value, the diminution in value of Claimant's retirement benefit is \$87,000.

In addition, the manner in which Claimant was terminated by the Town and the Individual Councilmembers has injured his reputation and standing in the community in which he resides and has caused emotional distress and mental anguish after having served as Town Manager for 14 years, being dismissed under circumstances that created the appearance that he may have acted improperly while employed as Town Manager (which Claimant vehemently denies) including implied financial irregularities regarding Town funds. These circumstances have resulted in non-economic injuries of \$1,000,000.

In addition, the actions of the Individual Councilmembers (both before and after assuming office) was done with malice and/or an intentional or reckless disregard of clearly established rights guaranteed Claimant under state and federal statutory

and constitutional law so as to make the Individual Councilmembers liable in their individual capacities for punitive damages in an amount no less than \$1,000,000.

Finally, Claimant has incurred attorneys' fees and costs to date in the amount of \$16,808.25.

SUMMARY

Lost Wages & Benefits to 8/4/14	\$ 139,909.36
Lost Future Wages & Benefits (post-8/4/14)	\$ 720,000.00
Diminution in Value of Retirement Benefits	\$ 87,000.00
Emotional Distress/Injury to Reputation	\$1,000,000.00
Punitive Damages (individual capacity liability only)	\$1,000,000.00
Attorneys' Fees and Costs to date	\$ 16,808.25
TOTAL AMOUNT OF CLAIM	\$2,963,717.61

*** The information and calculations in this Estimated Economic and Non-economic Damages are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.