

MEMORANDUM OF UNDERSTANDING
Cañada Del Oro Riverfront Park

This Memorandum of Understanding (“MOU”) is entered into as of this ___ day of _____, 2012, by and between Oro Valley Fast Pitch Softball (“OVFPS”), Strongtie Enterprises, LLC (“Contractor”), and the Town of Oro Valley (the “Town”). This MOU memorializes the intent and agreement of the parties with respect to the construction and installation of four shade structures (“Project”) over the bleachers on softball fields at Cañada Del Oro Riverfront Park (“Park”).

RECITALS

A. OVFPS is a non-profit organization that will donate the monies for the construction and installation of four shade structures over the bleachers at the Park and arrange for Project construction. OVFPS’s role in the Project is limited strictly the donation of the Project monies and arranging for a general contractor. OVFPS has no role in design, construction and installation of the Project.

B. The Contractor has agreed to provide charitable in-kind donation of services, in the manner described herein.

C. The Town will be the donee of the Project and will assume all maintenance, control and supervision of the Project upon acceptance.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF THE PROJECT

Utilizing OVFPS’s donation, the parties intend and hereby agree to construct and install four shade structures over the bleachers on the softball fields at the Park. The parties shall use reasonable efforts to complete the Project no later than June 1, 2012.

2. ROLES OF THE PARTIES

A. THE CONTRACTOR

The Contractor is an independent contractor that will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing its work on the Project. The Contractor shall be solely responsible for all means and methods of project work, construction and any and all similar tasks on the Project. The Contractor

represents and warrants that it is qualified to perform the undertaking that is the subject of this Agreement. The Contractor shall retain exclusive supervision and control of the Project until final completion. The Contractor acknowledges that the Park will remain in use during construction and installation of the Project, and Contractor agrees to protect the work as required to protect the safety of persons using the Park.

B. ORO VALLEY FAST PITCH SOFTBALL

OVFPS will facilitate the donation of construction funds for the Project and arranges for Project construction and installation. OVFPS's role on the Project is limited strictly providing the funds for the Project and arranging for the general contractor. OVFPS has no role in design or construction of the Project.

C. THE TOWN.

The Town is the Owner of the Park, and will be the donee of the Project upon acceptance ("Project Owner"). When the Project is substantially complete, any and all required inspections passed and accepted, the Town will assume ownership, maintenance, control and supervision of the Project and shall be responsible for maintaining and providing appropriate liability insurance or coverage through its self-insurance retention program.

3. CONSTRUCTION ACTIVITIES AND RESPONSIBILITIES

Upon execution and approval of this MOU, OVFPS will make the necessary arrangements to begin scheduling Project construction and installation. Only after all requirements, conditions precedent and obligations under this MOU are met will Project construction activities begin. Construction and installation is to commence upon the full execution of this MOU, and the parties shall use reasonable efforts to complete the Project on or before June 1, 2012. The Town shall obtain all required zoning and use permits and approvals needed for the Project, including lighting, if required by Arizona law.

4. INDEMNITY AND WARRANTY OBLIGATIONS

A. After construction, installation and acceptance of the Project by the Town, the Town shall indemnify and hold harmless OVFPS and Contractor from any and all liability except workmanship and manufacturing issues, including, but not limited to, manufacturers defects, substandard workmanship, flaws in design, construction and installation

B. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town its agents, representatives, officers, directors, officials and employees from any and all claims, damages, causes of action, losses, expenses,

demands, judgments or liabilities, including costs of defense and attorney's fees, arising directly or indirectly arising or alleged to have arisen out of the work to be performed, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. Contractor shall provide appropriate insurance to cover its operations under the Contract and shall name the Town as an Additional Insured.

C. The contractor shall warrant and guarantee all the work against defective workmanship or materials for a period of one year commencing on the date of final acceptance of the work under the contract, ordinary wear and tear and unusual abuse or neglect excepted. The contractor shall obtain such manufacturer's or producer's warranties or guaranties on all items, materials, electrical, or mechanical equipment consistent with those provided as customary trade practice. All such warranties or guaranties shall be transferred to the Town at the time of final acceptance.

D. The Contractor agrees to obtain Insurance Coverage of the types and amounts as required in Attachment A and keep the Insurance Coverage in force until all work has been completed and the completed project has successfully completed its warranty period. The Contractor shall furnish the Town with a Certificate evidencing liability insurance policy or policies with the minimum insurance limits as indicated.

5. TERMINATION

This MOU may be terminated by any Party upon thirty (30) days written notice.

6. MISCELLANEOUS

The parties to this MOU understand that each party entered into this MOU in reliance on the agreement of each of the other parties to perform its obligations hereunder. This MOU is binding and enforceable with respect to the subject matter hereof, and may be modified or amended only by a writing signed by all parties. This MOU shall be governed by and construed in accordance with Arizona law, and shall be subject to the provisions of Arizona Revised Statutes § 38-511.

IN WITNESS WHEREOF, the Parties hereby subscribe their names this _____ day of _____, 2012.

ORO VALLEY FAST PITCH SOFTBALL

By _____

Title _____

Date _____

State of Arizona)
) ss.
County of)

On this ___ day of _____, 2012, _____, known to me to be the person whose name is subscribed to the within instrument, personally appeared before me and acknowledged that he/she executed the same for the purposes contained.

Given under my hand and seal on _____, 2012.

Notary

My Commission Expires: _____

STRONGTIE ENTERPRISES, LLC

By _____

Title _____

State of Arizona)
) ss.
County of)

On this ___ day of _____, 2012, _____,
known to me to be the person whose name is subscribed to the within instrument,
personally appeared before me and acknowledged that he/she executed the same for the
purposes contained.

Given under my hand and seal on _____, 2012.

Notary

My Commission Expires: _____

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Rosen, Town Attorney

Date: _____

Date: _____

INSURANCE

The Contractor agrees to obtain insurance coverage of the types and amounts required consistent with the coverage limits shown below.

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Workers' Compensation Employer's Liability	Statute \$100,000
Commercial General Liability Insurance (including blanket contractual and premises/operations)	\$1,000,000 - Bodily Injury Combined Single Limit \$100,000 Property Damage
Comprehensive Automobile Liability (includes Contractor's owned, hired, or non-owned vehicles, assigned to or used in performance of the work)	\$1,000,000 – Bodily Injury and Property Combined Single Limit Each Occurrence

The Contractor shall provide satisfactory certificates on the required insurance coverage before beginning work. All policies shall contain an endorsement providing that written notice be given to the Town at least thirty (30) calendar days prior to termination, cancellation or reduction in coverage policy. Insurance policies shall remain in force until all work has been completed and the completed project has successfully fulfilled its warranty period. If a policy does expire during the life of the Contract, a renewal certificate of the required coverage must be sent to the Town of Oro Valley not less than five (5) business days prior to expiration date. Each certificate shall include project description, project number and the signed acknowledgement of the insurance company.

The Town of Oro Valley shall be included as an additional insured on all policies except Workers' Compensation. Policies for General, Automobile, and Excess Liability are primary over any insurance available to the Town and as to any claims resulting from the Contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

In regard to General, Automobile, and Excess Liability, the Contractor agrees to indemnify, defend and save harmless the Town of Oro Valley, its Mayor and Council, appointed boards and commissions, officials, officers and employees individually and collectively from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs or actions of any kind and nature resulting from personal injury to any person, including employees of the Contractor or any subcontractor employed by the Contractor (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Contractor for the work to be performed hereunder, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in the Contract will in no way be construed as limiting the scope of indemnity in this paragraph.