

## **County Attorney Comment**

March 23, 2016

To: Gila County Board of Supervisors  
From: Gila County Attorney's Office  
Re: April 5, 2016 Agenda Item Number 3688 (CDGB)

The county attorney's office cannot approve this agreement as to form inasmuch as Section 23 of the agreement, titled "CANCELLATION," doesn't fairly state the law.

A.R.S. § 38-511(F) is an unusual statute in that it expressly provides that notice of the statute shall be included in every contract to which the state or county is a party: *"Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party."* (Emphasis added.)

A.R.S. § 38-511(A) states: "The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

The plain language of the statute grants the right of cancellation to the state *or* the county to cancel the contract under certain circumstances, however, the contractual provision (section 23), inexplicably, sets out only the state's right to cancel.