WATERFALL ECONOMIDIS CALDWELL
HANSHAW & VILLAMANA, P.C.
SB No 00078300
5210 E. WILLIAMS CIRCLE, SUITE 800
TUCSON, ARIZONA 85711
TELEPHONE (520) 790-5828
FACSIMILE (520) 745-1279

Corey B. Larson, SB #022549
Attorneys for Plaintiff

COPY
NOV 18 2010
PATRICIA A. NOLAND
CLERK, SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

JAMES and JEAN GORMAN, married persons; THE BRAD P. GORMAN MEMORIAL FUND, Plaintiffs, vs. PIMA COUNTY, a municipal corporation; Defendant.	No. C20109071 **COMPLAINT** (Breach of Contract) Scott Rash

Plaintiffs allege:

1. Plaintiffs James and Jean Gorman (hereafter "Gormans") are married persons residing in Pima County, Arizona.

2. Plaintiff The Brad P. Gorman Memorial Fund is charitable organization operating in Pima County, Arizona.

3. Defendant Pima County is a municipality in the State of Arizona.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to Article 6, § 14, of the Arizona Constitution.

5. Venue in this county is proper pursuant to A.R.S. §§ 12-401 (5), and (15).

GENERAL ALLEGATIONS

6. The Gormans' son, Brad P. Gorman, was killed on September 30, 1999, while bicycling on the Catalina Highway. Since this time, the Gormans established The Brad P. Gorman Memorial Bikeway Fund to promote bicycle safety in Pima County, Arizona.

7. Beginning in or about March 2000, Plaintiffs assisted Pima County in acquiring federal funds in the amount of $467,000.00 for Pima County to extend the bike lanes on Catalina Highway.

8. Plaintiffs have also championed rider safety initiatives; produced tens of thousands of Share the Road Pocket Guides and bicycle safety bumper stickers; free bicycles to schools, homeless shelters, and Pima County employees; provided bicycle racks at the downtown library and YMCA; funded public service announcements on radio and TV; and produced a bicycle safety video promoting free headlights/taillights, helmets, and bicycle safety classes.

9. Plaintiffs also proposed to Pima County to locate a "saddle-up area" near the base of Mt. Lemmon on the Catalina Highway to provide a safe and legal place for cyclists to park, load or unload, and to meet before or cool down after riding on Mount Lemmon as well as to serve as a memorial to Brad P. Gorman.

10. Cooperative efforts between Plaintiffs and Pima County began as early as March 2000 to find an appropriate location for a Catalina Highway Bicycle Memorial Park and Saddle-Up Area (hereafter "the project").

11. As early as 2002, Pima County identified an eight acre floodplain area parcel of land on the northwest corner of E. Camino Miramonte and Catalina Highway - 10825 E. Catalina Highway - that was owned by Pima County as the selected location for such a Pima County memorial park and saddle-up area (hereafter "Camino Miramonte" or "the location").

12. Because of certain budget constraints, and in spite of the $467,000 previously acquired to facilitate improvements to Catalina Highway, Pima County had been unable to move forward with planning or development of the project.

13. Although the location for the project had been selected by Pima County officials, no action was undertaken to design or construct the Catalina Highway Bicycle Memorial Park and Saddle-Up Area by Pima County.

14. The Gormans inquired of Pima County officials regarding the status of the project at Camino Miramonte on several occasions. As a result of these discussions, the Gormans understood that the only reasons Pima County was not moving forward with the project at Camino Miramonte was due to lack of funds and final approval of the project at the location by Pima County Manager Charles Huckelberry.

15. The Gormans understood from Pima County officials that if funding were made available and if Mr. Huckelberry gave approval, then work on the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area could commence at the Camino Miramonte location selected by Pima County.

16. On October 25, 2008, Plaintiffs wrote to Pima County Manager Charles Huckleberry setting forth their understanding that work on the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area could commence at the Camino Miramonte location selected by Pima County if Mr. Huckelberry gave approval on behalf of Pima County and if funds were made available.

17. Plaintiffs' October 25, 2008 letter included a rough sketch of a proposal of the project that would include a parking area and Ramada at the Camino Miramonte location, and which would utilize an area of only a quarter acre of the eight acre floodplain area of the location.

18. Plaintiffs' October 25, 2008 letter requested that Mr. Huckelberry provide final approval for the project on behalf of Pima County for the Catalina Highway Bicycle

Memorial Park and Saddle-Up Area at the Camino Miramonte location and offered "to complete the [Catalina Highway Bicycle Memorial Park and Saddle-Up Area] project with [Plaintiffs'] personal funds and donations upon approval [from Mr. Huckelberry]."

19. Plaintiffs' October 25, 2008 letter to Pima County constituted an offer to fund the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project at Camino Miramonte, if Pima County provided final approval and authority to Plaintiffs to proceed.

20. By letter dated November 3, 2008, Mr. Huckelberry accepted Plaintiffs' offer on behalf of Pima County. Plaintiffs could fund the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project at the location on Camino Miramonte.

21. Mr. Huckelberry, as County Manager, has authority to bind Pima County.

22. Mr. Huckelberry's November 3, 2008, letter confirmed that the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project at the location had received all necessary governmental approvals and requested that the Plaintiffs "take those actions necessary to fund the Catalina Highway Bicycle Memorial Park and Saddle-Up Area." Mr. Huckelberry specifically authorized Plaintiffs to begin to expend funds in order to make "this memorial park a reality."

23. Mr. Huckelberry's November 3, 2008, letter represented to Plaintiffs that Pima County specifically authorized Plaintiffs to spend their own funds and/or donated funds toward the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area at Camino Miramonte.

24. By accepting the offer set forth in Plaintiffs' letter dated October 25, 2008, Mr. Huckelberry's November 3, 2008, letter formed a contract between Plaintiffs and Pima County (hereafter the "Agreement").

25. Mr. Huckleberry and/or Pima County knew or reasonably should have known that Plaintiffs would expend time, effort, travel, and funds in furtherance of the Agreement.

26. Mr. Huckleberry and/or Pima County knew or reasonably should have known that Plaintiffs' expenditure of time, effort, travel, and funds in furtherance of the Agreement would be wasted or otherwise of no value if Pima County subsequently rejected the location or otherwise subsequently refused to allow the Catalina Highway Bicycle Memorial Park and Saddle-Up Area to be constructed at Camino Miramonte.

27. Following receipt of Mr. Huckelberry's November 3, 2008, letter and formation of the Agreement, the Gormans made significant contributions from their own funds.

28. Plaintiffs also sought donations to the Brad P. Gorman Memorial Fund to fund the design and construction of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area. Specifically, Plaintiffs advertised in the Tailwinds, a local periodical with a bicycling focus, for donations to support the project and used donated funds toward the design and construction of the project at Camino Miramonte.

29. In reliance on Mr. Huckleberry's November 3, 2008, letter and formation of the Agreement, Plaintiffs also began the process of formalizing the design for the project at Camino Miramonte. Working cooperatively with representatives from Pima County, Plaintiffs retained architects and engineers to prepare plans, perform environmental surveys, and locate utilities to the proposed site.

30. Plaintiffs expended time, effort, travel, and funds toward the design and construction of the project at the location.

31. In November 2009, Plaintiffs submitted plans prepared by the architects and engineers for the project at Camino Miramonte to Pima County Development Services for plan review.

32. Plaintiffs also paid all fees associated with the permitting process in the amount of $465.00.

33. Pima County Development Services issued a permit on December 11, 2009 - Permit #P09CP06697 – approving the engineering and design for the project at the location and approving the commencement of construction (hereafter "Permit").

34. By issuing the Permit, Pima County indicated further approval of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area at the Camino Miramonte location.

35. The funds expended by Plaintiffs in reliance upon the Agreement and the Permit were as follows:

Psomas Engineering	$	14,486.48
Norris Design		8,978.04
Harris Environmental		2,900.00
Pima County Permit		465.00
Tailwinds Newspaper		3,300.00
Total	$	30,129.52

36. After Plaintiffs had expended funds, time, and travel, and after Pima County had issued the Permit, Pima County informed Plaintiffs that Camino Miramonte was being abandoned as the site for the memorial park.

37. By letter dated February 9, 2010, Pricilla Cornelio, Director of the Pima County Department of Transportation, informed Plaintiffs that Pima County "will not pursue this location" as a site for the Catalina Highway Bicycle Memorial Park and Saddle-Up Area.

38. Mrs. Cornelio's February 9, 2010 letter effectively revoked any and all prior approvals made by or on behalf of Pima County with regard to the Catalina Highway Bicycle Memorial Park and Saddle-Up Area at the location.

39. As a result of Pima County's urging Plaintiffs to go forward with the planning, design, and permitting for the project at the location, then its subsequent

abandonment of Camino Miramonte as a potential site for the project, Plaintiffs have expended time, travel, and $30,129.52 in hard costs for which no benefit has been derived.

40. Prior to the filing of this lawsuit, Plaintiffs complied with the Notice of Claim requirements of A.R.S. § 12-821.01(A) regarding claims against governmental entities and governmental employees. More than sixty-days have elapsed since Plaintiffs complied with the Notice of Claim requirements and, therefore, Plaintiffs are permitted to file this action.

41. This lawsuit is timely filed pursuant to the Notice of Claim requirements of A.R.S. § 12-821.01(A).

COUNT I – BREACH OF CONTRACT

42. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

43. Plaintiffs have been damaged as a result of Pima County's breach of the Agreement in an amount not less than $30,129.52. This amount of Plaintiffs' damages is capable of being calculated with certainty such that the claim is liquidated and Plaintiffs are entitled to pre-judgment interest.

44. Plaintiffs have also been damaged as a result of incurring costs related to their own time, effort, and travel in an amount to be proven at trial.

45. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

COUNT II – EQUITABLE ESTOPPEL

46. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

47. Pima County, by Mr. Huckelberry's November 3, 2008 letter and by the issuance of the Permit, represented that Plaintiffs were authorized to proceed with the design and construction of the project at the Camino Miramonte location.

48. Plaintiffs relied upon Pima County's representations and expended an amount not less than $30,129.52 and also incurred costs related to their own time, effort, and travel in an amount to be proven at trial.

49. Pima County has repudiated its representations and conduct and Plaintiffs have been damaged in an amount not less than $30,129.52.

50. The representations made by and on behalf of Pima County bore a considerable degree of formalism under the circumstances sufficient to form the basis for the application of estoppel against Pima County.

51. If Pima County is not estopped, Plaintiffs will suffer a serious injustice.

52. The public interest will not be unduly damaged if Pima County is estopped and such estoppel will not substantially and adversely affect the exercise of governmental powers.

COUNT III - NEGLIGENT MISREPRESENTATION

53. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

54. By express representations of Mr. Huckelberry, and by approving the plans and designs for the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project, Pima County represented that Plaintiffs' payment for planning and designing of the project should proceed toward completion of the project.

55. By express representations of Mr. Huckelberry, and by approving the plans and designs for the project, Pima County represented that the Camino Miramonte location had been approved for the building of the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project.

56. The representations of Mr. Huckelberry and Pima County were supplied to Plaintiffs, who justifiably relied upon said information.

57. The representations supplied by Mr. Huckelberry and Pima County to Plaintiffs were false and made without reasonable care or competence in obtaining or communicating the information.

58. The representations of Mr. Huckelberry and Pima County were supplied to Plaintiffs for whose benefit and guidance the information was supplied.

59. The representations of Mr. Huckelberry and Pima County were supplied to Plaintiffs with the intent that Plaintiffs rely upon the representations.

60. Plaintiffs relied upon Pima County's representations and expended funds in furtherance of a site specific design and engineering for the project.

61. Contrary to Mr. Huckelberry's and Pima County's representations, the Catalina Highway Bicycle Memorial Park and Saddle-Up Area project is not approved for the Camino Miramonte location.

62. As a result of Pima County's negligent misrepresentation, Plaintiffs have been damaged in an amount not less than $30,129.52.

63. Plaintiffs have also been damaged as a result of incurring costs related to their own time, effort, and travel in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendant Pima County, as follows:

A. For judgment for Plaintiffs' hard cost damages in an amount not less than $30,129.52;

B. For judgment for Plaintiffs' additional damages for their time, effort, and travel in an amount to be proven at trial;

C. For pre-judgment and post-judgment interest on Plaintiffs' damages at the rate of 10% per annum pursuant to A.R.S. § 44-1201.

D. For Plaintiffs' reasonable attorneys' fees pursuant to A.R.S. § 12-341.01;

E. For Plaintiffs' taxable costs;

F. For such other or additional relief as the evidence and law may permit.

DATED this 18th day of November, 2010.

WATERFALL ECONOMIDIS CALDWELL
HANSHAW & VILLAMANA, P.C.

By_____
Corey B. Larson
Attorneys for Plaintiff