



Staff Report

Agenda Item: **IGA LEASE AGREEMENT WITH YAVAPAI COUNTY FOR COURT FACILITIES** - Discussion and consideration of an Intergovernmental Agreement between the Town and Yavapai County for use of the Clarkdale Magistrate Courtroom.

Staff Contact: Kathy Bainbridge, Clerk

Meeting Date: June 17, 2008

Background: Yavapai County Superior Court has run out of room to provide the necessary services for Family Law proceedings. The County is in the process of constructing new court facilities, but in the interim, has been looking for space until the project is completed. Yavapai County contacted Clarkdale regarding leasing the Clarkdale Magistrate Court for one day a week to hold their proceedings.

The County will be purchasing a hand wand magnetometer that will be used by the Bailiff for screening people to keep weapons out of the court facility. The County will be providing a computer to replace the lap top being currently used for recording purposes in the courtroom along with having access to the computer & printer on the AZ Judicial Information Network.

The Clarkdale Magistrate and staff were involved in drafting the Section 5 – Uses of the IGA, and discussions were held regarding the ramifications of the additional usage of the courtroom and Judge's Chambers for Clarkdale. The monthly lease payment of \$400.00 has been calculated to cover the additional utility charges and janitorial services.

This Agreement has been reviewed by the Town Attorney along with the County Attorney. The County Board of Supervisors has the IGA on their agenda for June 16th.

Recommendations: To approve the Intergovernmental Agreement between the Town of Clarkdale and Yavapai County for use of the Clarkdale Magistrate Courtroom.

INTERGOVERNMENTAL AGREEMENT

**INTERGOVERNMENTAL AGREEMENT FOR THE ESTABLISHMENT OF
A LEASE AGREEMENT WITH YAVAPAI COUNTY FOR COURT FACILITIES**

THIS LEASE AGREEMENT is made and entered this _____ day of _____, 2008, by and between the **Town of Clarkdale**, an Arizona Municipality (hereinafter referred to as "Town" or "Lessor") and Yavapai County (hereinafter referred to as the "County" or "Lessee").

Recitals

1. The Town currently owns the property at 49 N. 9th Street, Clarkdale, Arizona. The County desires to enter into an agreement whereby the Town leases a portion of the property located at 49 N. 9th Street designated as the Clarkdale Magistrate Court - Courtroom along with the adjoining Judge's Chambers (hereinafter referred to as the "Courtroom") to the County, so that the County may use such property for holding court.
2. The parties hereto are authorized to enter into this Agreement pursuant to A.R.S. §11-952.

THEREFORE, it is agreed as follows:

Covenants

SECTION 1. - DESCRIPTION OF PROPERTY

The Town agrees to lease and the County to hire from the Town, the property as described above located at 49 N. 9th Street, Clarkdale, Arizona. As used in this Lease, the term "Courtroom" refers to the real property described above.

SECTION 2. - TERM OF LEASE

The "Occupancy Date" shall be July 1, 2008. The initial term of the Lease shall be for one (1) year, commencing from the Occupancy Date.

SECTION 3. - OPTION TO RENEW LEASE

This Agreement shall have the option of renewal for successive one year (1) year periods, provided the County gives written notice to Town at least 60 days prior to the expiration of the original term of this Agreement or subsequent term of Agreement. The option to renew this Agreement may be on the same terms and conditions as set forth herein, or on mutually agreed upon modified terms.

SECTION 4. - CONSIDERATION TO THE TOWN

As consideration to the Town, the County shall pay to the Town the sum of \$400.00 in monthly payments, beginning July 1, 2008, and continuing on the 1st day of each month thereafter. This amount is based upon actual costs of utilities and custodial services.

SECTION 5. - USES

- A. The days of use during the term of the lease will be every Thursday from 8:00 – 5:00.
- B. The use of the Courtroom includes the use of the Judge's Chambers.
- C. The use of the Courtroom includes use of the laptop computer for recording purposes. The County will provide a computer for the Town's use while they are using the Town's laptop for recording purposes.
- D. The use of the Courtroom includes use of telephones and internet services. The County shall be responsible for reimbursement of long distance phone and FAX charges which will be billed monthly by the Town.
- E. The County shall provide copy paper as needed, and two copy machine toner cartridges per year in lieu of individual copy charges.
- F. Town will provide a secure storage space for forms and supplies.
- G. Children require supervision.
- H. There is no breakroom provided for the Judge or court staff at the facility.
- I. Access to public drinking water is not available at the facility.
- J. The County may erect by Courtroom such temporary signs as are necessary for the use of the Magistrate Courtroom as a Superior Courtroom. Notwithstanding the foregoing, all signs erected by the County must follow the Town's established procedures for approval of such signs and must be reviewed and approved by the Town's Design Review Board.
- K. In addition, the County shall have the right to use the Driveway and Parking Lot, for access to Courtroom. County understands and agrees that said Driveways and Parking Lots are not part of this Lease, and that Town shall continue to have right of access over said Driveways and Parking Lot .
- L. The County agrees that the Courtroom shall be used only as a *Courtroom*. Should the County desire to put the Courtroom to a use not permitted by this paragraph, the County may do so only with the express written consent of the Town.
- M. At such time as the Courtroom shall not be used as permitted herein, this Agreement and any renewal thereof shall automatically be terminated, and possession returned to the Town, in a good and repaired condition.

SECTION 6. - IMPROVEMENTS

The County may improve or remodel Courtroom, at the County's own expense, for the purpose of a Courtroom, provided that the plans and specifications of the improvements or remodel are

first submitted to Town in advance, and further provided that Town approve those plans, in writing in, in advance of any work performed.

SECTION 7. - ENCUMBRANCES

The Town's fee interest in Courtroom shall remain unsubordinated to any debt incurred by the County for construction and improvements on the property, or otherwise. County shall not permit a lien, mortgage, or encumbrance whatsoever to attach to Courtroom.

SECTION 8. - SUBLETTING AND ASSIGNMENTS

The County may not sublet or assign the Courtroom in question in whole or part without the Town's consent.

SECTION 9. - WASTE, NUISANCE

During the term of this Agreement, County shall comply with the applicable laws affecting the Courtroom. The County shall not commit any waste on the Courtroom or any nuisance.

SECTION 10. - NOTICES

All notices, demands, or other writings to this Agreement to be sent to or provided to either party shall be deemed to have been properly served when made in writing and deposited in the U.S. mail, registered or certified, and postage prepaid, and addressed as follows:

To Town: Town of Clarkdale
 Attention: Town Manager
 P.O. Box 308
 Clarkdale, AZ 86324

To County: Yavapai County
 Attn: County Administrator
 1015 Fair Street
 Prescott, AZ 86305-1852

The address to which any notice, demand, or any other writing may be given or sent to any party as above provided may be changed by written notice given to such party as above provided.

SECTION 11. - BUILDING MAINTENANCE

The Town shall have the obligation to maintain the structural components of the building, including the common areas, heating, ventilation, cooling, plumbing, sewage, the essential utilities, and associated improvements, as well as, day-to-day maintenance of Courtroom.

SECTION 12. – UTILITIES

The Town shall pay all charges for utilities used by County, including water, gas, telephone, sewage, waste disposal, and electricity.

SECTION 13. – NON-LIABILITY OF TOWN; INDEMNIFICATION OF TOWN

The County shall indemnify and hold harmless Town, its agents and employees, from and against any and all claims arising from: (a) County’s use of Courtroom; (b) the conduct of the County’s business or anything else done or permitted by County to be done in or about Courtroom or elsewhere in the property; (c) any breach or default on the performance of County’s obligations under this Agreement, or arising from any negligence of the County, of County’s agents, contractors or employees. The liability to County to indemnify Town, its agents and employees, shall not extend to any matter against which Town shall be effectively protected by insurance, provided that if any liability shall exceed the amount of effective and collectable insurance, the liability of County shall apply to the excess. Whether the insurance is “effective” depends in part, but not by way of limitation, on the absence of any defense to coverage made by the insurer.

SECTION 14. - INSURANCE

A. *General Liability Insurance.* During the entire term of this Agreement, or any extensions thereof, County shall cause to be written and maintain a policy or policies of public general liability insurance. The policy or policies shall insure County against claims and demands made by any person or persons for any injuries received in connection with the operation, and any improvements, and for any other risk insured against by such policies. Such policy or policies shall be written with limits of not less than one million dollars (\$1,000,000.00) combined single limit for damages incurred or claim for bodily injury, death, or otherwise, plus one hundred thousand dollars (\$100,000.00) for damages to property. All such policies shall name Clarkdale as a Named Additional Insured. The County shall provide a current Certificate of Insurance to the Town bearing evidence to this coverage at the onset of the agreement, and evidencing that current coverage is maintained following any subsequent expiration date

B. *Casualty Insurance.* During the time of this Agreement or extension thereto, Town shall keep insured the building, together with improvements against all loss or damage by fire and windstorm, and “extended coverage” at the Town’s option and expense. The amount of the insurance shall be for the full insurable value.

C. *Premiums.* The County shall pay the premiums for the general liability insurance policy required by this section, and shall deliver to Town evidence of such payment before the time of any premium becomes delinquent and send proof of payment to the Town on a quarterly basis.

SECTION 15. - TOWN'S RIGHT OF ENTRY

Town shall at all times during the term of this Agreement retain the right to enter Courtroom during the course of Town business.

SECTION 16. - COMPLIANCE WITH STATUTES AND REGULATIONS

The County will at all times comply with all local, state and federal regulations, statutes and ordinances, including but not limited to, compliance with all applicable building codes and zoning codes with respect to improvements undertaken.

SECTION 17. - MEDIATION

If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

SECTION 18. - TERMINATION

If either party fails to perform its respective obligations herein, the non-defaulting party shall give written notice of the default to the defaulting party. If the default is not cured within thirty (30) days of receipt of the notice of default, the non-defaulting party may terminate this Agreement upon written notice of termination delivered to the defaulting party.

SECTION 19. - DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE

On termination of this Agreement, for any cause, the County may remove from Courtroom, any personal property which the County caused to be deposited in Courtroom, provided that such personal property has not been attached to Courtroom in a manner that will cause damage to the structure upon removal. However, all improvements left on Courtroom after termination of this Agreement, at the option of the Town, shall remain and shall be transferred in fee to the Town. County shall leave Courtroom in a good and clean condition and shall repair any damage to Courtroom, reasonable wear and tear excepted.

SECTION 20. - ATTORNEYS' FEES AND COSTS; WAIVER OF JURY

In any civil action to enforce the terms of this Agreement, the parties agree to be responsible for its own attorneys' fees and costs. In addition, the parties agree to waive their rights to a jury trial.

SECTION 21. - ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties hereto, which may be revisited on an as needed basis. No terms or provision hereof may be changed, waived, discharged or terminated unless the same be in writing, mutually agreed upon, and executed by both parties hereto.

SECTION 22. - APPLICABLE LAW

The laws of the State of Arizona shall govern the construction, performance and enforcement of this Agreement. Venue for any action arising out of the provisions of this Agreement shall be Yavapai County, Arizona.

SECTION 23. - HEADINGS

The paragraph headings contained herein are inserted only for convenience of reference and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

SECTION 24. - BENEFIT

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, but shall not be assigned by County.

SECTION 25. - RELATIONSHIP OF PARTIES

This Agreement is not intended to create, nor shall it be interpreted as giving rights to, the relationship of principal and agent or that of joint ventures with respect to Courtroom between Town and District.

SECTION 26. - TIME IS OF THE ESSENCE

Time is of the essence in this Agreement.

SECTION 27. - AUTHORITY; CANCELLATION OF LEASE

This Agreement will not be effective until it has been approved and duly ratified by the parties' respective governing bodies, as required by law. In addition, either party may cancel this Agreement pursuant to A.R.S. §38-511, in the event of a conflict of interest, as described therein. The Town shall cause this Agreement to be recorded in the office of the Yavapai County Recorder.

Yavapai County

Town of Clarkdale

By _____
Carol Springer
Board Chairman

By _____
Doug Von Gausig
Town Mayor

Approved as to form:

Approved as to form:

David Hunt
County Attorney

Robert S. Pecharich, Esq.
Town Attorney

Attest:

Attest:

Kathy Bainbridge, Town Clerk

**APPROVAL OF TOWN OF CLARKDALE/YAVAPAI COUNTY
COURT FACILITIES INTERGOVERNMENTAL AGREEMENT**

Pursuant to Arizona Revised Statutes §11-952(L), I have reviewed the Intergovernmental Agreement dated _____ between Yavapai County and the Town of Clarkdale for the use of Court Facilities and hereby approve said Agreement.

Robert M. Brutinel, Presiding Judge
Superior Court in Yavapai County

Date