



Staff Report

Agenda Item: **Facilities Use Agreement**– Approval of a 2008-2009 Reimbursement Agreement for the use of Town Facilities by the Yavapai Community College District

Staff Contact: Janet Perry, Assistant Town Manager

Meeting Date: June 24, 2008

Background: In an effort to realize Council’s desire to support professional development opportunities for staff members, we wish to become a Sponsoring Partner in the Yavapai College Partnership Program. In doing so, we would agree to exchange the use of our facilities to conduct classes in for receipt of four (4) complimentary scholarships to attend their accelerated Business Management Courses. Most classes are three units and normally cost \$156.00 each. Participation in this program could lead employees to a Management Certificate or an Associate of Applied Science in Management.

The courses currently offered for the Fall Schedule are:

- BSA 120 Principles of Supervision
- BSA 131 Introduction to Business
- BSA 132 Ethics in Business
- BSA 171 Electronic Commerce

- BSA 220 Principles of Management
- BSA 223 Human Resource Management
- BSA 229 Management Problems
- BSA 233 Business Communication

We would be coordinating efforts with the City of Cottonwood in this endeavor so that for any given semester we would host a maximum of four (4) classes each. And this would occur three (3) times a year. The classes would be conducted one (1) day per week, usually on a Wednesday, lasting from 9:00 a.m. to 5:00 p.m. Attendance in the past has averaged twelve (12) people, never exceeding fifteen (15). With that in mind, for classes to be held in Clarkdale, those would be scheduled in the Ladies Lounge. This would avoid any conflict with other potential use of the facility which most frequently takes place in the Auditorium or Men’s Lounge.

Recommendation: Approval of the Facilities Use Agreement with Yavapai College for participation in their Partnership Program.

FACILITIES USE AGREEMENT

THIS AGREEMENT, is made and entered into as of the 25th day of June, 2008, by and between the Town of Clarkdale, Arizona, hereinafter referred to as "Town", and the Yavapai Community College District, an Arizona special taxing district, hereinafter referred to as "College".

Recitals

A. The College is desirous of offering certain classes within the Town of Clarkdale, at facilities owned by the Town. The Town is desirous of encouraging the provision of said classes within the Town of Clarkdale, and is agreeable to making Town facilities available to the College as set forth herein.

B. The parties hereto are empowered by Arizona Revised Statutes §11-952 to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Town hereby grants to the College the non-exclusive use of certain Town facilities as described herein for the purpose of providing educational classes and programs.

Agreement

- 1. Premises.** This Agreement applies to the following facilities: Clark Memorial Clubhouse, 19 North Ninth Street, Clarkdale, Arizona 86324 (the "Facility").
- 2. Term.** The term of this Agreement shall be for a period of one (1) year, commencing on July 1, 2008, and terminating on June 30, 2009, unless otherwise earlier terminated pursuant to this Agreement. The parties may agree to extend or renew this Agreement pursuant to a separate written instrument negotiated and executed by the parties hereto.
- 3. Use.** The Facility shall be used exclusively for the purpose of providing classes and educational programs in the usual course of the College's business. The College reserves the right to cancel a class or program if enrollment does not meet current College policies. In the event of a change in class meeting dates, times and places within the Facility, College will provide the Town advance written notice of such changes. When using the Facility, or any portion thereof, the College agrees to comply with all applicable state, federal or town laws and regulations, and with the policies and regulations of the College pertaining to the use of the Facility. Upon termination of this Agreement, the College agrees to return possession of the Facility to the Town in good and clean condition, usual wear and tear excepted.
- 4. Scheduling of Facility.** The College shall complete a Facility Use Agreement form in the form attached hereto as Exhibit ____, and submit same to the College's Purchasing Department at least ten (10) days prior to the requested date of Facility use. The College shall notify the Town by advance written notice of the schedule of classes to be offered by the College and presented at the Facility. The Town shall make the Facility available at least thirty (30) minutes prior to any scheduled class time.

5. **Consideration.** As consideration to the Town for the rights and privileges granted herein, the College shall establish a scholarship account for four (4) sponsored individuals in the amount of Six Hundred Twenty Four Dollars and no/cents (\$624.00) per class per semester. Said specific scholarship arrangement only applies to classes co-sponsored by the Yavapai College Partnership Program in Sedona/Verde Valley.

6. **Insurance.** College shall provide to the Town a Certificate of Insurance evidencing a blanket insurance policy, to be renewed annually, in the aggregate amount of 1 million dollars, in which the Town is an additional named insured.

7. **Indemnification.** The College shall indemnify, defend and hold harmless the municipality and its officials, employees and agents from and against any and all liabilities, judgments, settlements, losses, costs or charges (including attorneys fees) incurred by the municipality and/or any of its officials, employees or agents as a result of any claim, demand, action, or suit relating to any bodily injury (including death), loss of property, damage caused by, arising out of, related to, or associated with this Agreement.

The parties intend and agree that by this agreement the Town does not waive the limitation of liability provided to owners who allow use of property for public recreational or educational purposes, pursuant to A.R.S. 33-1551.

8. **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.

9. **Notice.** 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
Fax: (928) 634-0407

To College: Yavapai Community College District
Attention: _____

Fax:

10. **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.

11. **Severability.** Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

12. **Authorization to Execute Agreement.** In accordance with Arizona Revised Statutes §11-952(D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.
13. **Town's Right of Entry.** Town shall at all times during the term of this Agreement retain the right to enter the Facility and make inspections thereof at reasonable times.
14. **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.
15. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and no terms or provision hereof may be changed, waived, discharged or terminated unless the same be in writing executed by both parties hereto.
16. **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
17. **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 District.
18. **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 venturers with respect to the Facility between Town and College.
19. **Time is of the Essence.** Time is of the essence in this Agreement.
20. **Authority; Cancellation of Agreement.** 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.

IN WITNESS WHEREOF, the Town and College have hereunto executed this document, effective the day and year herein above written.

TOWN OF CLARKDALE

YAVAPAI COMMUNITY COLLEGE DISTRICT

By: Doug Von Gausig, Mayor

By:

**ATTORNEY APPROVAL FORM
FOR
THE TOWN OF CLARKDALE**

I have reviewed the above-referenced Facilities Use Agreement between the Town of Clarkdale and the Yavapai Community College District, an Agreement among public agencies which has been reviewed pursuant to A.R.S. §11-951 through §11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the Yavapai Community College District to enter into this Agreement.

Dated this ____ day of _____, 2008.

Robert S. Pecharich, Esq.
Boyle, Pecharich, Cline
& Whittington, P.L.L.C.
Attorneys for the Town of Clarkdale