



Staff Report

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

Staff Contact: Walt Good, Deputy Town Clerk

Meeting Date: August 26, 2008

Background: At the June 24, 2008, Special Council Meeting the Town Council approved the Facilities Use Agreement with Yavapai College. 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 agreement was presented to the Yavapai College purchasing department for their signature. The purchasing department from Yavapai College reviewed the document and due to their agreement procedure changes this year, the College requested that dual indemnification be included in the agreement.

Changes were submitted to Southwest Risk Services and to Robert Pecharich, Town Attorney, for review and acceptance. Both have accepted the changes to the agreement.

Recommendation: Approval of the Facilities Use Agreement with Yavapai College.

FACILITIES USE AGREEMENT

THIS AGREEMENT, is made and entered into as of the 26th day of August, 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.** Each party shall and hereby does indemnify, defend and hold harmless the other party, including their directors, officers, employees, students, consultants and agents, from and against any claims, demands, loss, damage, or expense relating to any third-party infringement claim, bodily injury or death of any person or damage to real and/or tangible personal property incurred while such other party is performing activities under the auspices of the Agreement if and to the extent such is caused by the negligent or willful acts of omissions of the indemnifying party, its personnel or agents in the performance of activities described in or called for in the implementation of the 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 I s 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

ARIZONA SCHOOL RISK RETENTION TRUST, INC.

VERIFICATION OF COVERAGE

ISSUE DATE: JULY 18, 2008

AGREEMENT NO: 170

DISTRICT:
YAVAPAI COUNTY COMMUNITY COLLEGE DISTRICT
1100 E. SHELDON ST.
PRESCOTT, AZ 86301
MR. FRANK D'ANGELO
CONTROLLER

ARIZONA SCHOOL RISK RETENTION TRUST, INC.
1112 WEST CAMELBACK ROAD
PHOENIX, ARIZONA 85013
PHONE: (602) 266-4911
FAX: (602) 266-7754

THIS VERIFICATION OF COVERAGE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE HOLDER. THIS VERIFICATION DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED. THIS VERIFICATION IS TO CERTIFY THAT COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE DISTRICT FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT, WITH RESPECT TO WHICH THIS VERIFICATION MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE DESCRIBED HEREIN IS SUBJECT TO ALL TERMS, CONDITIONS AND EXCLUSIONS OF SUCH COVERAGE.

TYPE OF COVERAGE	LOCATION/DESCRIPTION	LIMIT OF PROPERTY COVERAGE
MOTOR VEHICLE PHYSICAL DAMAGE		
ALL RISK PROPERTY		
COURSE OF CONSTRUCTION		

TYPE OF COVERAGE	LIMIT OF LIABILITY
COMPREHENSIVE GENERAL AND AUTO LIABILITY	\$1,000,000 COMBINED SINGLE LIMIT PER OCCURRENCE

OTHER

DESCRIPTION OF OPERATIONS, PERIOD AND CONDITIONS TO WHICH THIS COVERAGE APPLIES:
(NOTE: ALL COVERAGE IS SUBJECT TO THE TERMS, CONDITIONS, EXCLUSIONS AND DEDUCTIBLES CONTAINED IN THE AGREEMENT BETWEEN THE DISTRICT AND THE ARIZONA SCHOOL RISK RETENTION TRUST, INC.)

AGREEMENT NO. 170	AGREEMENT PERIOD: 7/1/2008 UNTIL CANCELLED
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THIS VERIFICATION IS TO PROVIDE EVIDENCE THAT COVERAGE IS MAINTAINED IN FULL FORCE AND EFFECT FOR YAVAPAI COUNTY COMMUNITY COLLEGE DISTRICT AS RESPECTS USE OF THE TOWN OF CLARKDALE'S FACILITIES FOR INSTRUCTIONAL USE JULY 1, 2008 THROUGH JUNE 30, 2009. COVERAGE IS SUBJECT TO THE TERMS CONDITIONS, EXCLUSIONS AND DEDUCTIBLES DESCRIBED IN AGREEMENT 170, APPENDIX A.1, ITEM 2., COVERAGE A, BODILY INJURY AND/OR PROPERTY DAMAGE LIABILITY BETWEEN THE DISTRICT AND THE ARIZONA SCHOOL RISK RETENTION TRUST, INC.

CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ARIZONA SCHOOL RISK RETENTION TRUST, INC. WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER. FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE TRUST, ITS AGENTS OR REPRESENTATIVES.

CERTIFICATE HOLDER:
TOWN OF CLARKDALE
890 MAIN ST
CLARKDALE, AZ 86324
ATTN: JANET PERRY



7/18/2008

JULIE ORMISTON, ARM
FOR: ARIZONA SCHOOL RISK RETENTION TRUST, INC.