



# Staff Report

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**Agenda Item:**           **Renewal of the License Agreement between Jackie Harrison, dba: Gypsy Wind Carriage Co., and the Town of Clarkdale – Approval of the renewal of the License Agreement to operate and maintain a horse drawn carriage company between Jackie Harrison, dba: Gypsy Wind Carriage Co., and the Town of Clarkdale.**

**Staff Contact:**           Dawn Norman, Parks and Recreation Supervisor

**Meeting Date:**           December 9, 2008

**Background:**           The Town has received a request from Jackie Harrison (previously Jackie Odom) to renew the License Agreement dated December 18, 2007, between Jackie Harrison, dba: Gypsy Wind Carriage Co., and the Town of Clarkdale, which allows her to operate and maintain a horse drawn carriage company in downtown and upper Clarkdale.

The existing agreement expired on June 30, 2008 and contained terms under Section VII: TERM AND RENEWAL OF LICENSE which allows for the renewal of the license subject to the approval of the Clarkdale Town Council:

**VII. TERM AND RENEWAL OF LICENSE:**

The license and rights herein granted shall take effect and be in force on December 9, 2008 and shall continue in full force and effect until June 30, 2008. The license may be renewed each year by an application to the Community Development Department providing the name, address and business address of the applicant. Such renewal is subject to the approval of the Clarkdale Town Council.

Pursuant to Section VII, Mrs. Harrison has provided an application bearing the name, address, and business address. In addition, she has supplied proof of insurance naming the Town as Additional Insured as required under the terms of the agreement.

In accordance with the terms of the License Agreement between Jackie Harrison, dba: Gypsy Wind Carriage Co., and the Town of Clarkdale, dated December 9, 2008, staff is presenting Mrs. Harrison's request to Council for consideration. The License Agreement sets forth the terms and conditions for the operation of the carriage business on the streets in the Town of Clarkdale.

**Recommendation:**    To approve the renewal of the License Agreement between Jackie Harrison, dba: Gypsy Wind Carriage Co., and the Town of Clarkdale, for the operation and maintenance of a horse drawn carriage company.

**LICENSE AGREEMENT**  
**Between Jackie Harrison dba Gypsy Wind Carriage Company, and the**  
**Town of Clarkdale**

THIS AGREEMENT is made and entered into this 9<sup>th</sup> day of December 2008, between the Town of Clarkdale, a municipal corporation of the State of Arizona (hereinafter referred to as "TOWN"), and Jackie Harrison, DBA Gypsy Wind Carriage Co., and which is authorized to do business in the State of Arizona (hereinafter referred to as "Licensee").

WHEREAS, Licensee is a horse drawn operator which desires to conduct business within the Town of Clarkdale pursuant to a License Agreement; and

WHEREAS, Town and Licensee have agreed to be bound by the terms and provisions of this License; and

NOW, THEREFORE, the parties agree as follows:

I. **LICENSE:**

The Town grants a license to Licensee to operate and maintain a horse drawn carriage company subject to the provisions and conditions of this license, and Licensee's valid acceptance of the same. The parties specifically acknowledge that the Town reserves the right to exercise any additional powers which may be granted to a municipality in the event that there are any future changes in state or local legislation or regulations regarding horse drawn carriage operations.

II. **GRANT OF AUTHORITY UNDER LICENSE:**

WHEREAS the Town has approved the qualifications of the Licensee, the license hereby granted by the Town to the Licensee includes the right and privilege to engage in the business of operating a horse drawn carriage company in the Town for the purpose of providing horse drawn carriage rides within the Town of Clarkdale. There is, therefore, hereby granted to the Licensee the right and privilege to develop carriage stands and routes in, over, across and along any public street, public way and public place, now laid out or dedicated within the designated National Register Historic District in the Town of Clarkdale .

Passengers may be loaded or discharged only in designated loading zones.

The following locations are designated as loading zones:

- (1) Carriage stands designated by the Town Manager or his/her designee.

(2) Location on private property (i.e. outside of the road right-of-way and any public areas) for prearranged tours, special events, and point to point transportation.

(3) Location on the street adjacent to homes, restaurants, hotels, churches, and other establishments for prearranged tours, special events, or point to point transportation for persons departing from or arriving at those establishments provided that there is no off-street parking otherwise available and that the carriage is parked outside of any travel lane.

Specific routes must be approved by the Town Manager before Gypsy Wind Carriage Rides can conduct business.

### III. INSURANCE REQUIREMENTS

- A. A company offering horse-drawn vehicle tours in the Town of Clarkdale shall be required to provide proof of insurance at the time of business license application and upon request by any inspecting agent of the Town of Clarkdale. Insurance requirements shall be a General Liability & Injury policy of ONE MILLION DOLLARS (\$1,000,000), in protection of the Town, its officers, boards, commissions, agents and employees, through an insurance company approved by the Town Manager in a form satisfactory to the Town Attorney protecting the Town and all persons against liability for loss or damage from personal injury, death and property damage, occasioned by the negligent operations of the Licensee under this license.
- B. The policies mentioned in the foregoing paragraph shall name the Town, its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the Town fifteen (15) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers Licensee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.
- C. Licensee shall at the sole risk and expense of Licensee, upon demand of the Town, made by and through the Town Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the Town or its officers, boards, commissions, agents or employees, and arising out of or pertaining to the exercise or the enjoyment of such license, or the granting thereof

by the Town; provided, however, that nothing herein contained shall be deemed a waiver by Licensee of any rights it may have against Town under its license for indemnification based on the Town being the full or partial cause of any such injury.

- D. Licensee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against Licensee, the Town, its officers, boards, commissions, agents or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, however, that such payments or satisfactions shall not be deemed a waiver of any rights of Licensee against Town under its license for indemnification based on the Town being the full or partial cause of any such injury.

#### IV. POSTED INFORMATION

The following information shall be posted in or upon each carriage during hours of operation:

- A. Information on the carriage vehicle's official gross weight and dimensions. The vehicle's official rated capacity for number of passengers shall be conspicuously posted on or in the vehicle.
- B. A rate card shall be posted in a conspicuous place where it may be easily and conveniently read by any passenger. The card shall display in plain legible type the rates to be charged for transporting passengers.
- C. The name, address, and telephone number of the veterinarian who certifies the health of the horses.
- D. The current veterinarian examination record for the horse in service.
- E. The annual immunization record including rabies, Venezuelan equine encephalomyelitis, western equine encephalomyelitis, tetanus, influenza, and negative Coggins test (this latter test to be administered every other year) for the horse in service.
- F. A picture of the horse and a name or other designation for the horse in service.
- G. A description of any identifying characteristics, marks, or brands of the horse in service.
- H. The load/weight which the horse in service is capable of pulling as certified by a veterinarian.

I. Hours of operation to be between 10 AM to 9 PM, unless approved by Council.

V. RIGHT TO INSPECTION BY VETERINARIAN; TREATMENT OF HORSES

In the event the Town receives a complaint or has a concern about the condition or treatment of the animals involved in this license the Town has the right to call in a veterinarian to examine the animal. The cost of that examination shall be born by the licensee.

(1) No driver may use more than a light touch of the whip upon any animal, and no driver or other person may forcefully strike an animal, or make movements or noise intended to frighten or harm an animal.

(2) Horses shall be allowed access to water at least every one (1) hour while in service.

(3) No animal shall be subject to any condition or treatment, whether in service or out of service, which will impair the good health and physical condition of that animal.

VI. NON-EXCLUSIVE LICENSE:

The right to use and occupy said Town streets and other public ways for the purpose herein set forth, shall not be exclusive, and the Town reserves the right to grant a similar use in said streets to any other person, so long as similar uses shall not interfere with Licensee's operation under the terms of this license.

VII. TERM AND RENEWAL OF LICENSE:

The license and rights herein granted shall take effect and be in force on December 9, 2008 and shall continue in full force and effect until June 30, 2009. The license may be renewed each year by an application to the Community Development Department providing the name, address and business address of the applicant. Such renewal is subject to the approval of the Clarkdale Town Council.

VIII. CONDITIONS OF STREET OCCUPANCY AND WORK:

A. Each carriage shall be inspected by police for compliance before being placed into passenger service. Each carriage shall be inspected annually upon renewal of the License Agreement. In addition, any horse-drawn carriage involved in an accident shall be inspected by police prior to being returned to service transporting passengers for hire.

- B. Each horse-drawn carriage operated on the streets of the Town shall be maintained in a safe mechanical condition, with all safety equipment remaining intact and operative at all times when the carriage is in service.
- (1) "Slow Moving Vehicle" symbol mounted on the rear of the vehicle.
  - (2) Head lights and tail lights on each vehicle which meet or exceed the requirements of the State of Arizona for vehicles.
  - (3) Amber reflectors mounted on each side of the horse's bridle and harness and on each side of the horse-drawn carriage.
  - (4) Brakes (the carriage shall be equipped with brakes).
  - (5) The operator of the animal-drawn vehicle within the Town shall be subject to the traffic laws of the Town and the State of Arizona.
  - (6) Any spills or manure will be removed by the carriage operator at the end of the tour.
- C. The Chief of Police or his/her designee shall have the authority to remove from operation upon the streets of the Town any horse-drawn carriage which does not meet the requirements as specified by the Town Council under this License Agreement, and may prohibit operation of the carriage until deficiencies have been corrected. Any person dissatisfied with the decision of the Chief of Police shall have the right of appeal to the Town Manager. Any such appeal may be submitted in writing to the Town Manager within seven (7) days from the date that the decision by the Chief of Police is rendered. The decision of the Town Manager may be appealed to the Town Council.

**IX. LIMITATIONS OF LICENSE:**

The license granted herein shall be a privilege to be held in personal trust by the original Licensee and shall not be sold, assigned or otherwise transferred without prior consent of the Town Council, expressed by Resolution. The said consent of the Council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions, terms and obligations of this License.

**X. SEVERABILITY:**

If any section, subsection, sentence, clause or phrase of this License is for any reason held illegal, invalid or void by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

XI. ENTIRE AGREEMENT:

This agreement represents the entire agreement by and between the parties

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Clarkdale, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Doug Von Gausig, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathy Bainbridge, Town Clerk

\_\_\_\_\_  
Robert Pecharich, Town Attorney

\_\_\_\_\_  
Jackie Harrison, Gypsy Wind Carriage Co.

\_\_\_\_\_  
Date

PRODUCER Phone: 928-634-6422 Fax: 928-634-6759  
**INSURORS NETWORK, LTD.**  
 830 SOUTH MAIN  
 PO BOX 1584  
 COTTONWOOD AZ 86326

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED  
**HARRISON, JACKIE**  
 DBA GYPSI WIND CARRIAGE COMPANY  
 2760 S GREASEWOOD LN  
 CORNVILLE AZ 86325

INSURER A: **BURLINGTON INS CO**

23620

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	YES	<b>GENERAL LIABILITY</b>	11B00006347	06/29/08	06/29/09	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED. EXP (Any one person)	\$ 5,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY	\$ 1,000,000
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE	\$ 1,000,000
						PRODUCTS-COMP/OP AGG.	\$ 1,000,000
		<b>AUTOMOBILE LIABILITY</b>				COMBINED SINGLE LIMIT (Ea accident)	\$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS					
		<input type="checkbox"/> NON-OWNED AUTOS					
		<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
		<b>EXCESS / UMBRELLA LIABILITY</b>				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
							\$
							\$
							\$
							\$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATUTORY LIMITS	OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.I. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.I. DISEASE-EA EMPLOYEE	\$
						E.I. DISEASE-POLICY LIMIT	\$
		<b>OTHER:</b>					

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/ SPECIAL PROVISIONS**

Carriage Rides  
 Certificate holder is listed as additional insured on policy.

**CERTIFICATE HOLDER**

**CANCELLATION**

Town of Clarkdale  
 899 Main St  
 Clarkdale AZ 86324

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, IT'S AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Larry Hayes*

Attention:

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.