



Staff Report

Agenda Item: **Equipment Lease Agreement** – Approval of entering into an agreement with the Clarkdale Fire District for the leasing of a water tender (truck).

Staff Contact: Steve Burroughs, Public Works Director

Meeting Date: April 28, 2009

Background: The Town of Clarkdale is requesting the use of one of the Clarkdale Fire District water tenders (trucks). Our water truck is in poor condition and we are not in a position financially to purchase a new one. The District has two water tenders (trucks) of which, only one is used on a regular bases. The second is called into service one to two times a year. Excepting a lease from the District for the use of a water tender (truck), staff feels it is not only beneficial to our relationship, but it also benefits the citizens of the Town. The water tender (truck) would be stored at the Town shop behind the fire station. Therefore, the District would have quick access to it in the event it is needed. Some of the other provisions of the proposed Lease Agreement are:

- The term is for one year, and will automatically renew for additional one year terms unless it is terminated by either party.
- The Town must cover the District logo/lettering when they are using the equipment.
- The Town will be responsible for keeping the water tender (truck) in a “ready” state.
- The Town will keep the equipment in good condition and will make maintance and repairs as needed.
- The Town may only haul potable water with it.
- The Town must carry insurance for the equipment, and will be responsible for damage or loss.
- The District has the right to enter the Town’s property and take the equipment when it is needed for fire suppression. When the District is using it, the District is responsible for the insurance, maintenance, loss or damage.

Recommendation: To approve the Water Tender Lease agreement with the Clarkdale Fire District and authorize the Mayor to execute the agreement on behalf of the Town.

WHEN RECORDED, RETURN TO:

Clarkdale Fire District
Attn: Fire Chief
P.O. Box 1236
Clarkdale, AZ. 86324

Town of Clarkdale
Attn: Town Clerk
P.O. Box 308
Clarkdale, AZ. 86324

Town of Clarkdale
Water Tender (Truck) Lease

Equipment Lease Agreement

THIS EQUIPMENT LEASE AGREEMENT is entered into this 1st day of May, 2009 by and between the Clarkdale Fire District of P.O. Box 1236, Clarkdale, Arizona, 86324("Lessor") and the Town of Clarkdale, P.O. Box 308, Clarkdale, Arizona, 86324 ("Lessee").

WITNESSETH

For and in consideration of the mutual covenants and conditions hereinafter set forth, Lessor leases to Lessee a 1987 Ford, Water Tanker truck 1800gal. Serial # 1FDPF70HOHVA67042 White in color w/ Emergency Light bar and Lighting Front & Rear Water Tender #221, herein after referred to as "Equipment," upon the following terms and conditions:

A. Definitions

1. The following definitions are used but not otherwise defined in this Agreement:
 - a. "Casualty Value" means the actual cash value of the Equipment at the end of the Term or when in relation to a Total Loss, the actual cash value the Equipment would have had at the end of the Term but for the Total Loss. The Casualty Value may be less than but will not be more than the original purchase price of the Equipment.
 - b. "Total Loss" means any loss or damage that is not repairable or that would cost more to repair than the actual cash value of the Equipment.

B. Term

1. The term of this Lease will be for one (1) year commences May 01, 2009 and continuing to April 30, 2010. This lease shall automatically renew for additional one year terms unless written notice to the contrary is filed with either party.
2. The Lease may be terminated by either party upon thirty (30) days by delivery of written notice to the other party.

C. Rent

1. Rental for the term of this lease will be a onetime payment of ten dollars (\$10.00), said amount to be paid by Lessee to the Lessor prior to Lessee taking possession of the Equipment.

D. Delivery of Equipment

1. Lessor will, at the Lessor's own expense and risk, deliver the Equipment to Lessee Public Works Department located at 890 Main Street, Clarkdale, Arizona, 86324.

E. Use of Equipment

1. Lessee will use the Equipment in a safe and careful manner and will comply with all of the manufacturer's requirements and recommendations respecting the Equipment and with any applicable law, whether local, state or federal respecting the use of the Equipment. Further, Lessee will cause the Clarkdale Fire District logo/lettering to be covered in a non-permanent manner while Lessee uses the Equipment, i.e. magnetic signs.
2. Lessee will use the Equipment for the purposes for which it was designed and not for any other purpose.
3. Lessee will not alter, modify or attach anything to the Equipment without prior written consent of Lessor unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Equipment.
4. Equipment will be maintained according to Clarkdale Fire District standards and shall be housed in a controlled environment, maintained in a ready state including gas and water to be kept full. Emergency lights and in-truck radio are not to be used by unauthorized personnel.

F. Repair of Equipment

1. Lessee will, at Lessee's own expense, keep the Equipment in good repair, appearance and condition, subject to normal and reasonable wear and tear. Lessee will supply all parts that are necessary to keep the Equipment in good repair.
2. If the Equipment is not in good repair, appearance and condition when it is returned to Lessor, Lessor may make such repairs or may cause such repairs to be made as are necessary to put the Equipment in a state of good repair, appearance and condition, normal and reasonable wear and tear excepted. Lessor will make the said repairs within a reasonable time after taking possession of the Equipment and will give Lessee written notice of and invoices for the said repairs. Lessee will reimburse Lessor for the actual costs of said repairs.
3. Lessee may, but is not obligated to, enforce any warranty that Lessor has against the supplier or manufacturer of the Equipment. Lessee may enforce such warranty or indemnity in Lessor's name in good faith and at Lessee's expense.

G. Warranties

1. The Equipment will be in working order and good condition upon delivery. The Equipment is of merchantable quality and is fit for hauling potable water. Lessee will only use the Equipment for that purpose.

H. Loss and Damage

1. During the term of this lease, Lessee will be responsible for risk of loss, theft, damage or destruction to the Equipment from any and every cause while in the possession and control of Lessee.
2. If the Equipment is lost or damaged, Lessee will provide Lessor with prompt written notice of such loss or damage and will, if the Equipment is repairable, put or cause the Equipment to be put in a good state of repair, appearance and condition.
3. In the event of Total Loss of the Equipment, Lessee will provide Lessor with prompt written notice of such loss and Lessor will pay to Lessee the Casualty Value of the Equipment, at which point ownership of the Equipment will pass to Lessee.

I. Ownership, Right to Lease and Quiet Enjoyment

1. The Equipment is the property of Lessor and will remain the property of Lessor.
2. Lessee will not encumber the Equipment or allow the Equipment to be encumbered or pledged as security in any manner.
3. Lessor warrants that Lessor has the right to lease the Equipment according to the terms in this Agreement.
4. Lessor warrants that as long as no event of default has occurred, Lessor will not disturb Lessee's quiet and peaceful possession and unrestricted use of the Equipment for the purpose for which the Equipment was designed, except in the event that Lessor requires use of the Equipment for fire suppression purposes. In that event, Lessee grants Lessor the authority to enter Lessee's premises where the Equipment is stored and to take the Equipment for said purpose. Lessor will notify Lessee of this occurrence and will return the Equipment to Lessee's premises as soon as possible thereafter in the same condition as when it was taken. Should the Equipment be in use by Lessee at the time Lessor requires the Equipment for fire suppression purposes, the use for fire suppression purposes will take priority. However, Lessor will make all reasonable attempts to utilize other resources which will not jeopardize its fire suppression activities before disturbing Lessee's use of the Equipment. While Lessor is using the Equipment, Lessor will be responsible for its maintenance, loss, theft, damage, destruction and insurance coverage.

5. Insurance

1. Lessee will, during the Term of this Agreement and for as long as Lessee has possession of the Equipment, maintain and provide for insurance against loss of and damage to the Equipment for the actual cash value of the Equipment and will name Lessor as the Loss Payee. Lessor acknowledges that Lessee is insured through the Arizona Municipal Risk Retention Pool.
2. Lessee will, during the Term of this Agreement and for as long as Lessee has possession of the Equipment, maintain and provide for auto liability insurance against claims for bodily injury, including death, and property damage or loss arising out of the use of the Equipment. The insurance policy will have limits of at least one million dollars (\$1,000,000.00). Lessor will be name as an Additional Insured.
3. The insurance policy will have a provision that it will not be modified or cancelled unless the insurer provides Lessor with thirty (30) days written notice stating when such modification or cancellation will be effective.
4. Upon request by Lessor, Lessee will provide Lessor with an original policy or certificate evidencing such insurance.
5. If Lessee fails to maintain and provide for such insurance, Lessor may, but is not obligated to, obtain such insurance. However, if Lessor does obtain such insurance, Lessee will pay to Lessor the cost of such insurance upon notification from Lessor of the amount.

J. Indemnity

1. Lessee agrees to indemnify and hold harmless Lessor against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to Lessee's use of the Equipment.

K. Default

1. The occurrence of any one or more of the following events will constitute an event of default ("Event of Default") under this Agreement:
 - a. Lessee fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches Lessee's obligations under this Agreement.
 - b. Lessee becomes insolvent or makes an assignment of rights of property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the Federal bankruptcy law of the United States or other competent jurisdiction.
 - c. A writ of attachment or execution is levied on the Equipment and is not released or satisfied within 10 days.

L. Remedies

1. On the occurrence of an Event of Default, Lessor will be entitled to pursue any one or more of the following remedies (the "Remedies"):
 - a. Take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. Lessee waives any and all damage occasioned by such taking of possession.
 - b. Terminate this Agreement immediately upon written notice to Lessee.
 - c. Pursue any other remedy available in law or equity.

M. Assignment

1. LESSEE WILL NOT ASSIGN THIS AGREEMENT, LESSEE'S INTEREST IN THIS AGREEMENT OR LESSEE'S INTEREST IN THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.
2. If Lessee assigns this Agreement, Lessee's interest in this Agreement or Lessee's interest in the Equipment without the prior written consent of Lessor, Lessor may terminate this agreement immediately.

N. Additional Documents

1. Upon written request by Lessor, Lessee will execute and deliver to Lessor documents required by Lessor to protect Lessor's interest in the Equipment including, but not limited to, the documents necessary to file a UCC financing statement.

O. Entire Agreement

1. This Agreement constitutes the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.

P. Notice

1. Service of all notices under this Agreement will be delivered personally or sent by registered mail or courier to the following addresses: (should also show street addresses)

Lessor: Clarkdale Fire District

Attention: Fire Chief

P.O. Box 1236,

Clarkdale, Arizona 86324.

Lessee: Town of Clarkdale

Attention: Kathy Bainbridge, Town Clerk

39 N. Ninth Street

P.O. Box 308,

Clarkdale, Arizona, 86324,

Q. Payment

1. All dollar amounts in this agreement refer to U.S. dollars, and all payments required to be paid under this Agreement will be paid in U.S. dollars unless the Parties agree otherwise.

R. Interpretation

1. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

S. Governing Law

1. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, by the laws of the State of Arizona.
2. This agreement is subject to the provisions of A.R.S. § 38-511 and may be cancelled pursuant thereto.

T. Severability

1. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by both Parties subsequent to the expungement of the invalid provision.

U. General Terms

1. Time is of the essence in this Agreement.

2. This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement.
3. 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.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on this ___ day of _____ 2009.

Clarkdale Fire District

Jim Elmer, Chairman

ATTEST

Joe Moore, Fire Chief

Town Of Clarkdale

Doug Von Gausig, Mayor
ATTEST

Kathy Bainbridge, Town Clerk

Date

APPROVED AS TO FORM
Yavapai County Attorneys Office

By: _____

Date

APPROVED AS TO FORM

Robert S. Pecharich, Town Attorney