



# Staff Report

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**Agenda Item:**            **Clarkdale-Jerome Lions Club Facilities Use Agreement – Approval of the 2009-2010 Reimbursement Agreement for the use of Town Facilities by the Clarkdale-Jerome Lions Club.**

**Staff Contact:**            **Walt Good, Deputy Town Clerk**

**Meeting Date:**            **May 12, 2009**

**Background:**            **The Clarkdale-Jerome Lions Club has contracted with the Town since 1997 for the use of Town facilities. The Clarkdale-Jerome Lions Club has been a volunteer supporter of Clarkdale Parks and Recreation activities. The Lions Club attend and volunteer at; Concerts in the Park, Clarkdale Santa, New Years Eve, and Halloween.**

**Recommendations:**    **To approve of the 2009-2010 Reimbursement Agreement for the use of Town Facilities by the Clarkdale-Jerome Lions Club.**

**Reimbursement Agreement for Use of Town of Clarkdale Facilities  
by the Clarkdale-Jerome Lions Club**

**Recitals**

WHEREAS, the Clarkdale-Jerome Lions Club provides programs that benefit the citizens of the Town of Clarkdale such as eye glasses for the underprivileged, food and toys to families for Christmas, and provides volunteers for various Town of Clarkdale sponsored activities.

**Agreement**

THIS AGREEMENT made and entered into as of the 1<sup>st</sup> day of July, 2009, by and between the Town of Clarkdale, Arizona, hereinafter referred to as "TOWN", and the Clarkdale-Jerome Lions Club, hereinafter referred to as "CLUB".

For and in consideration of the mutual covenants hereinafter set forth, and a nominal fee for reimbursement of the TOWN's costs, the TOWN hereby allows CLUB to use the following town owned property for recreational or educational uses for the following terms:

<b>Event</b>	<b>Days</b>	<b>Facility</b>
Monthly Business Meetings	1 <sup>st</sup> Thursdays	Men's Lounge
4 <sup>th</sup> of July Parade/Sales Table (Town Event)	1 day per year	Clarkdale Town Park
Halloween Sales Table (Town Event)	1 day per year	Clarkdale Town Park
Concerts in the Park/Sales Table (Town Event)	10 days per year	Clarkdale Town Park
Officers Training	1 day per year	Men's Lounge/Auditorium
Santa comes to Clarkdale (Town Event)	1 day per year	Men's Lounge
New Year's Eve Event (Town Event)	1 day per year	Auditorium

**Term**

The term of this agreement shall be from July 1, 2009 to June 30, 2010.

In the event that the facility used by the CLUB is defaced in any way as a result of the use by the CLUB, the TOWN has the right to immediately void this agreement.

**Scheduling of Facilities**

The CLUB shall provide notice to the TOWN before it shall organize and conduct events/meetings, including, but not limited to disclosing information regarding the nature, dates, purpose, location and details of the event. Preference will be given to scheduling events that are Town of Clarkdale sponsored activities and events where the TOWN will be reimbursed for expenses. The TOWN will notify the CLUB in writing if an event is rejected and those items which specifically lead to the rejection. The TOWN's acceptance of said event shall not be unreasonably withheld.

If the CLUB has not vacated the premises by the ending time(s) scheduled for specific events, additional reimbursement costs will be due. The TOWN reserves the right to have a member or members of Town staff on the premises during any period the facility is in use by the CLUB.

### Use

The CLUB shall occupy and use the premises for the purpose(s) and specific dates and times scheduled with the TOWN, and for no other purposes.

### Rules for Use

The CLUB covenants that no nuisance will be maintained upon the premises herein used. The CLUB will use and occupy the premises in a careful, safe and proper manner, in accordance with any and all rules. Any violation of this agreement shall constitute an automatic breach of covenant and shall subject this agreement to immediate cancellation.

1. The person who signs the agreement is the responsible party. This person must be a member of the CLUB board. This responsibility includes informing everyone involved of the rules of the agreement.
2. No smoking or alcohol is allowed in any building or public facility owned by TOWN except those functions which have been given specific prior approval for use of alcohol by the Town Manager.
3. If it is necessary for a member of the TOWN's Public Works Department to be present during preparation/decorating at the scheduled event, the CLUB will reimburse the TOWN the cost for said employee time and administrative costs at a rate of \$25.00 per hour.
4. If the TOWN will be involved in setting up for the event (i.e. placing chairs and/or tables) the CLUB shall reimburse the TOWN the cost for resulting employee time and administrative costs at a rate of \$25.00 per hour.
5. No dragging or rolling anything across the floors.
6. Nothing is to be put on the floors.
7. Any and all painting of decorations or displays will be done off the premises.
8. There will be no stapling, nailing, tacking or gluing on the floors, walls, ceilings, moldings, doors and/or furniture, etc for any purpose at any time. No tape is allowed.
9. No open flames will be allowed.
10. No uses of the premises that have not been approved in this contract or in writing by the TOWN.
11. Spills will immediately be cleaned by the CLUB. Trash will be removed from the premises and all tables left clean immediately following the event.
12. Outside doors will be locked upon leaving the building.
13. Heating/Cooling will be returned to the temperature they were set at prior to the event.

14. All lights will be turned off after the event.
15. All string, wire, tape and/or decorations will be removed from the premises at the conclusion of the event.
16. Driving of vehicles is prohibited in town parks.
17. The TOWN may require security for some events. Security will be provided by off duty Clarkdale Police Officers, the cost of which will be reimbursed by the CLUB.
18. The TOWN may require additional restroom facilities for large events.
19. Staking in town parks or grounds is prohibited.
20. Tents and similar structures in town parks or grounds must be weighted down.

#### **Consideration**

**The Club will pay a utility charge at the time of scheduling for use of:**

- **Auditorium - Fifteen Dollars (\$16.50) per day or any portion thereof;**
- **Men's Lounge - Four Dollars (\$4.50) per day or any portion thereof;**
- **Ladies' Lounge – One dollar fifty cents (\$2.00) per day or any portion thereof.**

The CLUB will be responsible for cleaning the provided facility after each event. If at any time the TOWN must clean the premises after the CLUB has utilized the facility, the CLUB hereby agrees to reimburse the TOWN for said costs.

If the key to the facility is not returned, the CLUB hereby agrees to reimburse the TOWN for all costs associated with the re-keying of the facility.

#### **Indemnity**

The CLUB agrees that TOWN shall not at any time during the term of this agreement be responsible or in any way accountable, for any loss, injury, death or damage to persons or property from any cause or causes whatsoever which at any time may be by CLUB, or any other person while in or on the demised premises, and the CLUB agrees to hold the TOWN harmless for any and all claims, liabilities, losses, damages, costs and expenses whatsoever arising out of any such loss, injury, death or damage.

#### **Insurance**

The CLUB 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. An additional liquor liability policy may be required prior to events at which alcohol will be served.

#### **Indemnification**

The CLUB 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”.

**Attorney’s Fees**

In any suit which may be brought by either party to enforce this Agreement, or any part hereof, or to recover damages for the breach hereof, the Court, sitting without a jury, shall award a reasonable amount as and for attorney’s fees to the prevailing party.

**Non Waiver of Statutory Limitation of Liability**

The parties recognize and agree that the TOWN does not waive the limitation of liability provided to the TOWN for allowing recreational or educational uses of TOWN property, pursuant to A.R.S. Section 33-1551. The parties further recognize and agree that the fees charged by the TOWN are nominal and intended to offset the Town's cost in making the subject property available for use by the public.

**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.

**Dispute Resolution**

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 Arizona Municipal Risk Retention Pool.

**Other Provisions**

The TOWN reserves the right to close the event if the health and safety of the public is endangered.

The TOWN reserves the right to limit the number of participants allowed onto the site if the size of the crowd poses a threat to: 1) the public health and safety, 2) safety of the facility, or 3) the surrounding community, or if the event poses an inconvenience to other facility users.

The CLUB shall comply with proper and necessary arrangements for the serving of food, i.e. Yavapai County Health Codes, if serving of food is intended.

The TOWN reserves the right to limit activities using water due to drought conditions.

**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.

**Entire Agreement**

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and it may be amended or modified only by an instrument in writing signed by both parties.

**Legal Arizona Workers Act Compliance.**

The CLUB hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to The CLUB employment of its employees, and with the E-Verify requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”).

CONTRACTOR shall further ensure that each subcontractor who performs any work for CONTRACTOR under this Agreement likewise complies with the State and Federal Immigration Laws.

The CLUB agrees and warrants that the TOWN shall have the right at any time to inspect the books and records of the CLUB and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws. The CLUB agrees that any act by the CLUB or subcontractor that result in the impediment or denial of access of the books and records of the CLUB or subcontractor shall be a material breach of the Agreement on the part of the CLUB.

Nothing herein shall make the CLUB or subcontractor an agent or employee of the TOWN. Nothing herein shall act to establish privity of Agreement between the TOWN and any subcontractor.

Any breach of the CLUB or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting the CLUB to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the CLUB shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor (subject to the TOWN approval) as soon as possible so as not to delay project completion and at no additional expense to the TOWN. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of the CLUB.

The CLUB shall advise each subcontractor of the TOWN’s rights and the subcontractor’s obligations under this Article by including a provision in its Agreement with each subcontractor in the following form:

SUBCONTRACTOR hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to SUBCONTRACTOR’s employees, and with the E-Verify requirements of A.R.S. §23-214(A). SUBCONTRACTOR further agrees that the TOWN may inspect the SUBCONTRACTOR’S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this Agreement subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement the 12<sup>th</sup> day of May, 2009.

**TOWN OF CLARKDALE**

**CLARKDALE-JEROME LIONS CLUB**

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Doug Von Gausig, Mayor  
PO Box 308  
Clarkdale, AZ 86324  
(928) 639-2400

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Dave Andrews, President  
PO Box 834  
Clarkdale, AZ 86324  
(928) 634-8207

(Town of Clarkdale Seal)

ATTEST:

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Kathy Bainbridge, Town Clerk

Approved as to Form:

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Robert Pecharich, Town Attorney  
Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C.  
125 North Granite St.  
Prescott, AZ 83301  
(928) 445-0122