



# Staff Report

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**Agenda Item:**            **Yavapai College Facilities Use Agreement** – Approval of a 2009-2010 Facilities Use Agreement for the use of Town Facilities by the Yavapai Community College District.

**Staff Contact:**            Janet Perry, Assistant Town Manager

**Meeting Date:**            July 14, 2009

**Background:**            The Town and Yavapai College have had a Facility Use Agreement for facilities use since 2007. The facility shall be used exclusively for the purpose of providing classes and educational programs in the usual course of the College's business.

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 \$174.00 each. Participation in this program could lead employees to a Management Certificate or an Associate of Applied Science in Management.

The Yavapai College has their own Facilities Use Agreement and have requested to get that signed also.

**Recommendation:**    Approval of a 2009-2010 Facilities Use Agreement for the use of Town Facilities by the Yavapai Community College District.

**Facilities Use Agreement  
Between**

**Yavapai Community College District  
And  
Town of Clarkdale  
(Facility Owner)**

**1. PARTIES**

The Parties to this Contract are Yavapai Community College District, hereinafter referred to as “College”, and Town of Clarkdale (name of organization owning the facility), hereinafter referred to “Owner”.

This agreement is made with reference to the following facts:

- Owner has agreed that College can utilize the facility located at 19 N Ninth St., Clarkdale, AZ 86324 for instructional use for the 2009-10 academic year.
- College represents that the facility will only be used for the purpose so stated.

Nothing in the Contract shall be construed to make either party the legal representative or agent of the other party, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of the other party. The relationship created by the Contract shall be that of independent Facility Owner, not joint venture, agent or business partners.

**2. USE**

The College agrees to conduct its activities in the facility in a careful and safe manner. When using the facility, or any portion thereof, College agrees to comply with all applicable state, federal or city laws and regulations, and with the policies and regulations of the College pertaining to the use and occupancy of the facility. The College agrees to take good care of the facility and any equipment and furniture located therein, and to leave the facility at all times in as good order and conditions as existed prior to College’s use thereof. The College reserves the right to cancel a class if enrollment does not meet current college policies. The College will notify the owner, in writing, of any changes affecting the class meeting times, dates or places within their facility.

**3. SCHEDULING**

The Facilities will be made available at least thirty minutes prior to class time. College shall complete a Facility Use Agreement form and submit it to the Purchasing Department ten business days prior to requested date. College will notify the Owner in writing of the schedule of classes to be offered in their facilities.

#### **4. TERM**

The term of this agreement shall commence on July 1, 2009, and end on June 30, 2010, at which time College's rights to use the facility under this agreement shall automatically expire unless otherwise extended in writing, by the College and agreed upon by the owner.

#### **5. COMPENSATION**

The College will compensate the owner for use of the facility as follows: to establish a scholarship account for (four) sponsored individuals in the amount of \$696.00 per class during FA and/or SP semester, for the use of Partner's facilities. This specific scholarship arrangement only applies to classes co-sponsored by the Yavapai College Partnership Program in Sedona – Verde Valley.

#### **6. INSURANCE**

The College, agrees to procure, at it's expense, and maintain during the term hereof, a policy of general liability insurance, against claims for bodily injury, death and property damage occurring in connection with College's use of any portion of the facility. The College shall provide the Owner with a certificate evidencing such insurance coverage is in effect.

#### **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.

#### **8. ENTIRE CONTRACT**

This agreement embodies the entire contract between Owner and College. The parties shall not be bound by or be liable for any statement or representative of any nature not set forth in this agreement. Changes of any of the provisions of this contract shall not valid unless completed in writing and signed by both parties.

#### **9. SUSPENSION AND TERMINATION**

A non-breaching party may terminate this Contract for the failure of the other party to comply with this Contract by giving that other party (30) thirty-day written notice of the failure to comply. The College may terminate this Contract immediately if the Owner files for bankruptcy or receivership, or takes any actions relating to insolvency, such as an assignment for the benefit of creditors. The College may terminate this Contract under A.R.S. Section 38-511 for a violation of that statute.

Any changes to the contract, must be agreed to both parties, and approved in writing by the College Contract Manager or his/her designee and the authorized representative of the Owner.

#### **10. ASSIGNMENT AND SUBLETTING**

The College or the Owner shall not have the right to assign this Agreement or allow any other person or entity to use or occupy this portion of the facility without the prior written consent of both parties

#### **11. ARBITRATION**

In the event of a dispute hereunder, the parties agree to use arbitration insofar by Section 12-1518, Arizona Revised Statutes, and rules promulgated thereunder.

#### **12. CONFLICT OF INTEREST**

The parties understand that this Agreement is subject to cancellation pursuant to Section 38-503 of the Arizona Revised Statutes, without penalty or further obligation on the part of the College, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the College is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of the Owner, in any capacity, or a consultant to the Owner, with respect to the subject matter of this Agreement.

#### **13. GOVERNING LAW**

The laws of the State of Arizona shall govern this Agreement, the courts of which state shall have jurisdiction of the subject matter hereof.

#### **14. AUTHORITY**

The individual signing below on behalf of the Owner hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Owner and that this Agreement is binding upon the Owner in accordance with its terms.

**EXECUTION DATE**

The parties have caused this Agreement to be executed by their duly authorized representatives, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

**“College”**

**“Owner”**

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

## FACILITIES USE AGREEMENT

THIS AGREEMENT, is 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 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, 2009, and terminating on June 30, 2010, 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 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 Ninety Six Dollars and no/cents (\$696.00) 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: Pam Risaliti, Purchasing & Contracting  
1100 E Sheldon  
Prescott, AZ 86301  
Fax: (928) 776-2193

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 \_\_\_\_\_, 2009.

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