

FACILITIES USE AGREEMENT

THIS AGREEMENT, is made and entered into as of the 1st 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.

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