



Staff Report

Agenda Item: **Clarkdale Chamber of Commerce Facilities Use Agreement – Approval of the 2010-2011 Reimbursement Agreement for the use of Town Facilities by the Clarkdale Chamber of Commerce.**

Staff Contact: Dawn Norman, Community Services Supervisor

Meeting Date: June 8, 2010

Background: The Clarkdale Chamber of Commerce has contracted with the Town since 1995 for the use of Town facilities. The Clarkdale Chamber of Commerce supports several Clarkdale Parks and Recreation activities as well as the Community Services Department.

The Clarkdale Chamber of Commerce:

- Volunteers and hosts the hand-made ornament station at the Santa Comes to Clarkdale event;
- Volunteers and hosts the 4th of July Kids' Parade;
- Sponsor of the August 28th concert in the 2010 Concerts in the Park series in addition to providing the volunteer support for the concert; and
- Volunteered to take on the responsibility of the New Resident's Packet which they assemble and provide to the Town, Fire District and caboose to distribute.

Recommendations: To approve of the 2010-2011 Reimbursement Agreement for the use of Town Facilities by the Clarkdale Chamber of Commerce.

**REIMBURSEMENT AGREEMENT FOR USE OF
TOWN OF CLARKDALE FACILITIES
BY THE CLARKDALE CHAMBER OF COMMERCE**

Recitals

WHEREAS, the Clarkdale Chamber of Commerce provides public service events for the benefit of the citizens of the Town of Clarkdale; and

WHEREAS, the Clarkdale Chamber of Commerce supports economic development which benefits the citizens of the Town of Clarkdale.

Agreement

THIS AGREEMENT made and entered into as of the 1st day of July, 2010, by and between the Town of Clarkdale, Arizona, hereinafter referred to as "TOWN", and the Clarkdale Chamber of Commerce, hereinafter referred to as "CHAMBER".

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 CHAMBER to use the following TOWN owned property for recreational or educational uses for the following terms:

Facility	Days	Event
Clark Memorial Clubhouse Auditorium, Kitchen, and access to Kitchen	14 days per year	Made in Clarkdale – art show
Pool, Clark Memorial Clubhouse Kitchen	1 day per year	Pool Opening
Clark Memorial Clubhouse Ladies' Lounge	2 days per year	Verde Valley Regional Economic Organization Meetings
Town Park	As needed	Recreational events open to public and approved by TOWN

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.

Term

The term of this agreement shall be from July 1, 2010 to June 30, 2011.

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

Scheduling of Facilities

The CHAMBER 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 CHAMBER 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 CHAMBER 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 CHAMBER.

Use

The CHAMBER 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 CHAMBER covenants that no nuisance will be maintained upon the premises herein used. The CHAMBER 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 CHAMBER Board of Directors. 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 Clarkdale Town Manager. The CHAMBER shall submit a Request to Serve Alcohol to TOWN at least thirty (30) days prior to the scheduled event.
3. At prior approved alcohol event, the CHAMBER shall arrange for two (2) Clarkdale Police Officers and the CHAMBER will reimburse the TOWN the cost for said Officers time and administrative cost at a rate of Thirty Dollars (\$30.00) per hour per Officer with a minimum of two (2) hours.
4. If it is necessary for a member of the TOWN's Maintenance Department to be present during preparation/decorating at the scheduled event, the CHAMBER will reimburse the TOWN the cost for said employee time and administrative costs at a rate of Twenty-Five dollars (\$25.00) per hour.
5. If the TOWN will be involved in setting up for the event (i.e. placing chairs and/or tables) the CHAMBER shall reimburse the TOWN the cost for resulting employee time and administrative costs at a rate of Twenty-Five Dollars (\$25.00) per hour.
6. No dragging or rolling anything across TOWN facility floors unless the floors have been adequately protected. The TOWN will make the final decision as to what is "adequate".
7. Nothing is to be put on TOWN facility floors without authorization from the TOWN. (i.e.: sawdust, wax cleaners, plywood, scaffolding).
8. Any and all decorations, displays or props to be constructed, including, but not limited to, taping, texturing and or painting, will have all work performed outside of TOWN buildings. Any work requested to be performed inside of TOWN buildings; protection of floor and walls is required and is to be inspected by a representative of the TOWN prior to any work commencing. Method of proposed protection for wall and floor is to be provided to the TOWN representative prior to installation.

9. In the event of damage to or on the floor or walls of TOWN facility, said damage is to be reported immediately to the TOWN's representative, action will be directed accordingly.
10. There will be no stapling, nailing, tacking or gluing on the floors, walls, ceilings, moldings, doors and/or furniture, etc. of TOWN facility for any purpose at any time. No tape is allowed.
11. No open flames will be allowed in a TOWN facility without prior written permission from the TOWN.
12. No uses of the premises that have not been approved in this Agreement or in writing by the TOWN.
13. Spills will immediately be cleaned by the CHAMBER. Trash will be removed from the premises and all tables left clean immediately following the event.
14. Outside doors will be locked upon leaving the building.
15. Heating/Cooling will be returned to the temperature they were set at prior to the event.
16. All lights will be turned off after the event.
17. All string, wire, tape and/or decorations will be removed from the premises at the conclusion of the event.
18. Driving of vehicles is prohibited in Town parks.
19. 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 CHAMBER.
20. The TOWN may require additional restroom facilities for large events, the cost of which will be the responsibility of the CHAMBER.
21. Staking in Town parks or grounds is prohibited.
22. Tents and similar structures in Town parks or grounds must be weighted down.

Consideration

The CHAMBER will pay:

- a utility charge of Sixteen Dollars and Fifty Cents (\$16.50) per day or any portion thereof, for use of the Auditorium; and/or
- a utility charge of Four Dollars and Fifty Cents (\$4.50) per day or any portion thereof, for use of the Men's Lounge; and/or
- a utility charge of Two Dollars (2.00) per day or any portion thereof, for use of the Ladies Lounge; and/or
- a Park Reimbursement Booth Fee of Fifteen Dollars (\$15.00) per day for one (1) to two (2) consecutive days or Forty Dollars (\$40.00) for up to five (5) consecutive days for each booth sublet at CHAMBER events held in TOWN parks; and/or
- any appropriate Facility Reimbursement Fees as stipulated in the TOWN's most recent Fee Schedule Resolution.

Payment to the TOWN is required prior to the event date. These charges are agreed upon by the parties to be reasonable reimbursement to the TOWN for customary charges incurred by reason of the CHAMBER's use of the TOWN's facilities for the CHAMBER's educational and recreational uses.

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

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

If the premises are damaged during the CHAMBER's occupancy, CHAMBER hereby agrees to reimburse the TOWN for all costs associated with the repair of said damage. The TOWN will inspect the premises before and after rental to ascertain whether any damage has occurred during the CHAMBER's occupancy.

Indemnity

The CHAMBER 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 CHAMBER, or any other person while occupying and/or using TOWN property, and the CHAMBER 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.

The CHAMBER indemnifies, defends and holds harmless the TOWN 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 TOWN 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.

Insurance

The CHAMBER shall provide to the TOWN a Certificate of Insurance evidencing a blanket insurance policy, to be renewed annually, in the aggregate amount of at least One Million Dollars (\$1,000,000), 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.

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 experienced mediators maintained by the 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 CHAMBER 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 pursuant to Town Code Chapter 19, Article 19-11 Drought and Water Shortage Preparedness Plan.

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 CHAMBER hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of its employees, and with the E-Verify requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CHAMBER shall further ensure that each subcontractor who performs any work for CHAMBER under this Agreement likewise complies with the State and Federal Immigration Laws.

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

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

Any breach of the CHAMBER 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 CHAMBER 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 CHAMBER 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 CHAMBER.

The CHAMBER 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 _____ day of _____, 2010.

TOWN OF CLARKDALE

CLARKDALE CHAMBER OF COMMERCE

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



Becky O'Banion, President
PO Box 161
Clarkdale, AZ 86324
(928) 634-9438

(Town of Clarkdale Seal)

ATTEST:

Kathy Bainbridge, Town Clerk

Approved as to Form:

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