

#7

INFORMATION FOR THE MARCH 22, 2017
TONOPAH TOWN BOARD MEETING

AGENDA ITEM:

Discussion, deliberation and possible action to approve use of the Tonopah Rodeo Grounds by Team Roping Club and use of adjoining corral for housing roping steers.

PETITIONER: (Include Name, Address, Phone Number, E-mail)

Mike Metzger
Team Roping Club
P.O. Box 1752
Tonopah, NV 89049
775-842-0008
Mike.metzger@picworld.com

BACKGROUND OF ACTION ITEM REQUESTED:

See attached Use and Maintenance Agreement.

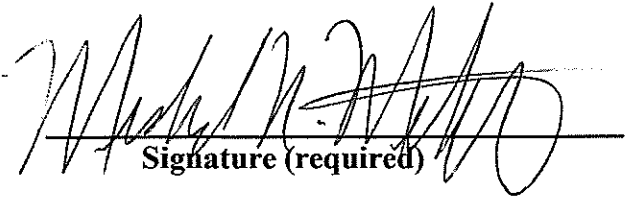
FISCAL IMPACT:

To be determined.

Please note: Due to posting requirements, all agenda items must be turned in by 12:00 noon five working days (Wednesday) prior to the day of the scheduled meeting or by 12:00 noon six working days (Tuesday of the prior week) if a holiday falls prior to the meeting.

NOTE: (The days in parentheses are for regular scheduled Town Board meetings which fall on the second and fourth Wednesday of each month)

In order to facilitate the review and consideration of an agenda item presented to the Tonopah Town Board, please include all documents or any relevant material or information with your request.


Signature (required)

3-15-17
Date

Request taken by: Kat Fall Date: 3.15.17

USE AND MAINTENANCE AGREEMENT

This Agreement is hereby made and entered into this 22nd day of March, 2017, by and between the UNINCORPORATED TOWN OF TONOPAH, P.O. Box 151, Tonopah, Nevada, 89049, hereinafter referred to as the "TOWN", and the TEAM ROPING CLUB, P.O. Box 1752, Tonopah, NV 89049, hereinafter referred to as the "CLUB".

WITNESSETH:

WHEREAS, the TOWN is the owner of certain improved real property, commonly known as the Rodeo Grounds, hereinafter referred to as the "Premises"; and

WHEREAS, CLUB desires to use said Premises for organized roping activities and to house roping steers; and

WHEREAS, the Tonopah Town Board, at a regular and properly agendized meeting held on March 22, 2017, discussed the issue of allowing CLUB to use and maintain the Premises, and voted to allow CLUB to use and maintain the Premises, under the terms and provisions hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements of the respective parties herein set forth, it is agreed as follows:

1. Term of Agreement.

This Agreement shall become effective on _____ and shall be terminated on _____.

2. Premises Subject to this Agreement

a. This Agreement pertains to a portion of the TOWN'S improved real property (the "Premises"), more particularly described as follows:

Township 3 North, Range 43 East, Parcel # 8-391-01, together with the improvements thereon, commonly known as the Rodeo Grounds/Fairgrounds, being 28.85 acres, more or less; and, except as provided in subsection "b" herein, includes the arena, roping steer corral, all structures, and lighting.

b. The Premises, for purposes of this Agreement, shall not include the area of the Rodeo Grounds/Fairgrounds commonly known as the 4-H area, now used by Central Nevada Grange, and does not include the Town corrals other than the roping steer corral located at the east end of the Rodeo Grounds Arena.

3. User Fees

The CLUB hereby agrees to pay to the TOWN all power bills and water bills during the specified period of this Agreement. Copies of billings from NV Energy and Tonopah Public Utilities for this period will be provided to the CLUB along with an invoice from the TOWN.

4. Maintenance

- a. CLUB agrees to perform routine maintenance and general clean-up of the Premises and the grooming, leveling and raking of the arena, chutes and pens.
- b. The TOWN agrees to maintain all infrastructures of the Premises, including, but not limited to, sprinkler lines, water mains and all appurtenances to the same, buildings, structures, and lighting and other fixtures not included herein.

5. Authorized Uses

It is agreed by the parties hereto that the Premises herein shall be used by the CLUB to conduct organized roping activities and to house roping steers; and the CLUB covenants to refrain from conducting any activities on the Premises not reasonably related to or incidental thereto, without first obtaining written consent therefore from the Town Board or Administrative/Utility Manager.

6. Waste, Nuisances and Unlawful Acts

- a. The CLUB covenants that it will not commit, or suffer any person on the premises at the CLUB'S invitation or by the CLUB'S permission, to commit waste upon the Premises or commit or suffer any such person to commit a public or private nuisance at the Premises, or commit or suffer to permit any illegal or immoral activities to be carried on at the Premises.
- b. The CLUB further covenants and agrees, at all times during the term of this Agreement, to conduct business and activities at the Premises in a lawful manner and in conformity with all applicable laws of the United States and the State of Nevada, and all ordinances, rules and regulations of the County of Nye, the Town of Tonopah (including the Tonopah Town Park Ordinance), and any and all other competent public authority affecting the use or condition of the Premises.

7. Condition of Premises

The CLUB acknowledges that the Premises have been examined, that the CLUB knows the condition thereof, and that there have been no representations regarding the condition thereof relied upon in the execution of this Agreement. The CLUB accepts the Premises "as is", in the condition in which said Premises are at the present time.

8. Improvements

- a. The CLUB shall not, without the written consent of the TOWN, make or cause to be made improvements, alterations, changes, or additions in, on or to the Premises.
- b. In the event that the CLUB requests and receives permission to make improvements to or on the Premises, all costs and expenses of making improvements, alterations, changes, or additions shall be the liability and obligation of the CLUB alone, and the CLUB shall promptly make payment of all such costs and expenses. The CLUB shall comply with all applicable laws, ordinances, regulations, rules and orders of any and all governmental authorities with respect to all improvements, alterations, changes, or additions made by the CLUB on the Premises.

- c. The CLUB acknowledges and agrees that title to all improvements now existing on the Premises, and all improvements, alterations, and additions as may be hereafter made by the CLUB on the Premises, shall be in the TOWN alone and, upon the termination of this Agreement, whether by lapse of the term hereof, forfeiture, or otherwise, the CLUB shall not remove any such improvements, alterations, and additions from the Premises.

9. Fixtures

The CLUB acknowledges and agrees that title to all fixtures now existing on or in the Premises, and all fixtures hereafter installed on or in the Premises shall be in TOWN alone and, upon the termination of this Agreement, whether by lapse of the term hereof, forfeiture, or otherwise, the CLUB shall not remove any such fixtures from the Premises.

10. Possession and Inspection

- a. During the term of this Agreement, and so long as the CLUB performs all the terms and conditions required hereunder, the CLUB shall enjoy all the rights to the Premises granted hereunder.
- b. The TOWN shall have the right to visit and inspect the Premises, at all reasonable times, to ascertain whether the CLUB is complying with the terms and conditions of this Agreement.

11. Vacation of the Premises

- a. Upon the termination of this Agreement, whether by lapse of time, forfeiture or otherwise, the CLUB will vacate and surrender possession of the Premises to the TOWN.
- c. Prior to surrender of possession to the TOWN, the CLUB shall have the right to remove from the Premises all personal property of the CLUB, excepting any personal property which has been installed so as to become a fixture in or on the Premises.

12. Assignment

Any assignment of this Agreement, in whole or part, without the written consent of the TOWN being first obtained, shall nullify this Agreement.

13. Termination of Agreement

It is expressly understood that this Agreement may be terminated for good cause, by either party hereto, by giving ten (10) days' written notice of termination, delivered via certified mail, return receipt requested.

14. Default

In the event the TOWN determines that the CLUB is in default under any of the provisions hereof, the TOWN shall give the CLUB written notice thereof, delivered via certified mail, return receipt requested, specifying the provision(s) under which the default has been determined to exist, and the CLUB shall have ten (10) days from the date of receipt of written notice to cure such default. In the event the CLUB does not correct any such default within the (10) days of receipt of notice, the TOWN may declare this Agreement forfeited, cancelled and terminated, and may enter and repossess all of the Premises, with or without process of law.

15. Covenant of Non-Discrimination

The CLUB covenants that in carrying out its business, and in its use of the Premises, it will in no way discriminate against, or allow the discrimination against, any person or persons on the basis of race, color, nationality, religion, gender, age, disability, or any other feature, trait or characteristic now classified as worthy of protection or which becomes so classified, under the federal or state laws and constitutions, during the term of this Agreement.

16. The CLUB'S Employees/Volunteers

The CLUB shall be responsible for the wages and the insurance of all persons the CLUB employs on the Premises; and the CLUB shall carry out and fully comply with all laws, both federal and state, relating to the employment of labor.

17. Insurance

- a. The CLUB agrees to maintain in effect, for the term of this Agreement, general liability and, if the CLUB intends to employ any persons on the Premises, State Industrial Insurance System (employer's liability), insurance indemnifying the CLUB and the TOWN against losses and/or claims arising from or during the CLUB'S occupation and use of the Premises.
- b. The CLUB shall maintain no less than Three Million Dollars (\$3,000,000.00) combined single limit in general liability insurance.
- d. The CLUB shall maintain no less than the statutorily required minimum in State Industrial Insurance System (employer's liability) insurance, if it employs any person or persons on the Premises.
- d. The CLUB shall not occupy the Premises until the TOWN has been furnished with certificates of insurance evidencing the CLUB'S compliance with the insurance provisions of this Agreement. Said certificates will provide that the referenced insurance will not be cancelled or reduced without at least thirty (30) days written notice to the TOWN.

18. Indemnification

It is agreed and understood that the CLUB will indemnify and hold the TOWN harmless from and against all claims, demands, actions or suits, including attorney's fees based upon or arising out of personal injury, including death or property damage caused by or sustained by the CLUB and/or any other person or persons, in connection with the CLUB occupation or use of the Premises under the provisions of this Agreement. The CLUB expressly covenants to relieve the TOWN from any and all liability or responsibility in connection therewith, and/or from any injuries to persons or damages to property occurring or committed on the Premises as a result of the activities conducted thereon by the CLUB, its agents, contractors or employees.

19. Force Majeure

Neither of the parties hereto shall be liable to the other for failure to perform the obligations required to be performed hereunder for such period of time as its failure of performance is caused by strikes, acts of God, national war emergency, or government restrictions.

20. Notices

Any notice required or permitted to be given hereunder shall be deemed properly given upon delivering the same via certified mail, return receipt requested, postage prepaid, to the addresses hereinabove set forth.

21. Relationship of Parties

All other provisions in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that nothing herein contained shall be deemed to constitute a partnership or a joint venture between the TOWN and the CLUB; nor shall the TOWN become liable for any debt or obligation incurred by the CLUB in the operation of any of the business or activities conducted on the Premises.

22. Interpretation and Construction

The paragraph captions or headings in this Agreement are inserted for convenience only and shall not be considered as part of this Agreement, or use in its interpretations. Such captions in no way define, limit or describe the scope or intent of this Agreement and are for reference only.

23. Entire Agreement

This Agreement sets forth the entire understanding between the parties, and there are no terms or conditions other than those set forth herein.

24. Modification

This Agreement may only be modified or amended by a written instrument signed by the parties with the same formality as this Agreement.

25. Governing Law

The formation, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Nevada applicable to contracts to be performed wholly within the State of Nevada.

26. Inurement

This Agreement shall be binding upon and inure to the benefit of all the heirs, administrators, executors, successors and assigns of the parties hereto.

27. Time of the Essence

Time is of the essence of this Agreement.

28. Severability

If any provision of this Agreement is held to be invalid, such invalidity shall not affect the validity of provisions of this Agreement which can be given effect without the invalid provisions, and to the end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto do hereby execute this Agreement on the date hereinabove first appearing.

TOWN:
Tonopah Town Board

CLUB:

Duane Downing, Town Board Chairman

Mike Metzger, Team Roping Club

ATTEST:

Kat Galli, Deputy Town Clerk