

INFORMATION FOR THE MAY 19, 2017
TONOPAH TOWN BOARD PUBLIC WORKSHOP

#4

AGENDA ITEM:

Discussion and deliberation regarding the form of Use and Maintenance Agreement, specifically, Section 17 - *Insurance*

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

Chris Mulkerns, Administrative Manager
Joe Westerlund, Utility Manager
P.O. Box 151
Tonopah, NV 89049
775.482.6336/6643

BACKGROUND OF ACTION ITEM REQUESTED:

See attached form of Use and Maintenance Agreement and Insurance Requirement Guidelines received from POOL/PACT for discussion.

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.

Chris Mulkerns 5/12/17
Signature (required) Date

Request taken by: Jet Bell 5/12.17
Date

Special Events Insurance Requirement Guidelines

Type I Events: Minimum \$300,000 limits required

Auctions	Musicals	Shows - Animal/Livestock, Antique, Art, Auto, Boat, Business, Consumer, Craft, Dance, Fashion, Flower, Garden, Home, RV, Trade and Vacation Social Gatherings Speaking Engagements Theater Performances Weddings & Receptions
Awards Presentations	Pageants	
Banquets/Luncheons	Phone-a-thons	
Bazaars	Picnics with no lake/pool activities	
Bingo Games	Reunions - Family	
Craft Shows	Reunions - Class	
Dinner Theater	Rummage Sales	
Educational exhibits	Sales	
Graduations	Scouting Jamborees	
Job Fairs	Seminars	
Meetings		

Type II Events: Minimum \$500,000 limits required

Horse Shows	Debuts	Proms
Charity/School Carnivals (no rides)	Debutante Balls	School Band/Drill Team Competition
Concerts with 1,000 or less	Festivals	Swap Meets
Dances - less than 1,000 people	Flea Markets	

Type III Events: \$Minimum \$1,000,000 limits required

Animal Acts	Evangelistic Meetings	Public events with security concerns
Animal Racing	Fireworks	Pop/Rock Concerts
Arcades	Go-Karts	Races/Truck Pulls/Mud Rallies
Carnivals	Gun Shows	Religious Assemblies
Circuses	Logging/Lumberjack shows	Rodeos
Concerts with more than 1,000 people	Parades	Shooting Competitions
Conventions	Picnics with pool or lake activities	Sporting Events
Dances with more than 1,000 people	Political Rallies	

NOTE: Those conducting the event should sign a permit containing hold harmless and indemnification provision and provide a certificate of insurance or a copy of the insurance policy.

USE AND MAINTENANCE AGREEMENT

This Agreement is hereby made and entered into this ____ day of _____, 20__, by and between the UNINCORPORATED TOWN OF TONOPAH, P.O. Box 151, Tonopah, Nevada, 89049, hereinafter referred to as the "TOWN", and _____, P.O. Box ____, Tonopah, Nevada, 89049, hereinafter referred to as the "_____".

WITNESSETH:

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

WHEREAS, _____ desires to use said Premises for _____; and

WHEREAS, the Tonopah Town Board, at a regular and properly agendized meeting held on _____, discussed the issue of allowing _____ to use and maintain the Premises, and voted to allow _____ 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:

[Legal Description, physical address, description of equipment, buildings, etc]

- b. The Premises, for purposes of this Agreement, shall not include:

3. User Fee

The TOWN currently incurs the following costs in water, energy and maintenance of the Premises:

TOWN COSTS:

\$ _____ per month, water	\$
\$ _____ per month, energy	\$
\$ _____ per month, maintenance	\$

Total Town Costs: _____ \$

The _____ hereby agrees to pay to the TOWN a user fee to offset the costs noted above in the amount of \$ _____ for the term of this Agreement.

4. Maintenance

- a. The _____ agrees to perform routine maintenance and general clean-up of the Premises to include _____. The _____ agrees to provide cleaning supplies, toiletries and garbage bags for this purpose. The _____ also agrees to _____
- 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.
- c. The TOWN agrees to provide maintenance of _____, as needed.
- d. The _____ covenants and agrees to notify the TOWN within seventy-two (72) hours when repairs are required to be performed on any fixture or structure on the Premises. Continued use of said fixture or structure in a state of disrepair shall be considered negligence by the _____, and any costs incurred during organized scheduled activities due to said negligence will be the responsibility of the _____.

5. Authorized Uses

It is agreed by the parties hereto that the Premises herein shall be used by the _____ to conduct _____; and _____ 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 Utility Manager and/or Administrative Manager, or the Town Board.

6. Waste, Nuisances and Unlawful Acts

- a. The _____ covenants that it will not commit, or suffer any person on the Premises at _____'s invitation or by _____'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 _____ 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 _____ acknowledges that the Premises have been examined, that _____ knows the condition thereof, and that there have been no representations regarding the condition thereof relied upon in the execution of this Agreement. The _____ accepts the Premises "as is", in the condition in which said Premises are at the present time.

8. Improvements

- a. The _____ 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 _____ 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 _____ alone, and _____ shall promptly make payment of all such costs and expenses. The _____ 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 _____ on the Premises.
- c. The _____ 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 _____ 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, _____ shall not remove any such improvements, alterations, and additions from the Premises.

9. Fixtures

The _____ 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, _____ shall not remove any such fixtures from the Premises.

Upon execution of this Agreement, _____ shall receive ____ sets of keys for access to the Premises as well as _____. _____ agrees to return all keys and _____ to the TOWN upon termination of this agreement.

10. Possession and Inspection

- a. During the term of this Agreement, and so long as _____ performs all the terms and conditions required hereunder, _____ shall enjoy all the rights to the Premises granted hereunder.
- b. The TOWN covenants _____.
- c. The TOWN shall have the right to visit and inspect the Premises, at all reasonable times, to ascertain whether the _____ 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, _____ will vacate and surrender possession of the Premises to the TOWN.

- b. Prior to surrender of possession to the TOWN, _____ shall have the right to remove from the Premises all personal property of _____, 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 _____ is in default under any of the provisions hereof, the TOWN shall give _____ written notice thereof, delivered via certified mail, return receipt requested, specifying the provision(s) under which the default has been determined to exist, and _____ shall have ten (10) days from the date of receipt of written notice, to cure such default. In the event _____ 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 _____ 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 _____'s Employees

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

17. Insurance

a. The _____ agrees to maintain in effect, for the term of this Agreement, general liability and, if _____ intends to employ any persons on the Premises, State Industrial Insurance System (employer's liability), insurance indemnifying _____ and the TOWN against losses and/or claims arising from or during _____'s occupation and use of the Premises.

b. The _____ shall maintain no less than Three Million Dollars (\$3,000,000.00) combined single limit in general liability insurance.

- c. The _____ 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 _____ shall not occupy the Premises until the TOWN has been furnished with certificates of insurance evidencing _____'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 _____ 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 _____ and/or any other person or persons, in connection with _____ occupation or use of the Premises under the provisions of this Agreement. The _____ 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 _____, 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 mailing such notice, by registered or 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 _____; nor shall the TOWN become liable for any debt or obligation incurred by _____ 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 _____

_____, Chairman _____

ATTEST:

_____, Deputy Town Clerk