

INFORMATION FOR THE MAY 24, 2017
TONOPAH TOWN BOARD MEETING

#7

AGENDA ITEM:

Discussion, deliberation and possible action to approve the use of Joe Friel Sports Complex for Tonopah Co-Ed Softball for summer 2017.

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

Melissa Godfrey
P.O. Box 3314
Tonopah, NV 89049
775-722-2214
Melissa_learose@hotmail.com

BACKGROUND OF ACTION ITEM REQUESTED:

Request to waive the insurance requirements and fees per 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.

Melissa Godfrey
Signature (required)

05-17-17
Date

Request taken by: Pat Bell Date: 5.17.17

USE AND MAINTENANCE AGREEMENT

This Agreement is hereby made and entered into this 24th day of May, 2017, by and between the UNINCORPORATED TOWN OF TONOPAH, P.O. Box 151, Tonopah, Nevada, 89049, hereinafter referred to as the "TOWN", and MELISSA GODFREY, P.O. Box 3314, Tonopah, Nevada, 89049, hereinafter referred to as the "USER".

WITNESSETH:

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

WHEREAS, the USER desires to use said Premises for organized sports activities; and

WHEREAS, the Tonopah Town Board, at a regular and properly agendized meeting held on May 24th, 2017, discussed the issue of allowing the USER to use and maintain the Premises, and voted to allow the USER 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:

Section 1, Township 2 North, Range 42 East, F#285846, Parcel 2, P#27-80-0700, Parcel #8-271-12, together with the improvements thereon, commonly known as the Joe Friel Sports Complex (the "Complex"), being 16.83 acres, more or less; and, except as provided in subsections "b" and "c" herein, includes the ball fields, parking area and all other land areas designated as part of the Complex, all structures, field lighting, playground structures, store room, restrooms and meeting room.

- b. The Premises, for purposes of this Agreement, shall not include the approximately one (1) acre of land located in the Northeast corner of the Complex.

3. User Fee

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

TOWN COSTS:	\$1,000.00 per month, per field – water	\$ 2,000.00
	\$30.00 per month, per field – energy	\$ 60.00
	\$200.00 per month, per field – maintenance	<u>\$ 400.00</u>
	Total Town Costs:	\$ 2,460.00

The USER 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 USER agrees to perform routine maintenance and general clean-up of the Premises to include the bathrooms and concession areas. The USER agrees to provide cleaning supplies, toiletries and garbage bags for this purpose. The USER also agrees to prepare fields for use for practice and games.
- 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 the fields, including but not limited to mowing, watering and lining, as needed.
- d. The USER 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 USER, and any costs incurred during organized scheduled activities due to said negligence will be the responsibility of the USER.

5. Authorized Uses

It is agreed by the parties hereto that the Premises herein shall be used by the USER to conduct organized sporting events; and the USER 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. Concession Stand: Liquor License/Food Permit

- a. If USER sells or distributes alcoholic beverages, USER hereby acknowledges by the parties hereto that as a condition precedent to USER selling alcoholic beverages at the concession stand, that USER will obtain a Nye County Retail Liquor License or Special Liquor Permit for the Premises.
- b. If USER sells food, USER hereby acknowledges by the parties hereto that as a condition precedent to USER selling food at the concession stand, that USER will obtain a State of Nevada Food Permit for the Premises.
- c. USER agrees to comply with all laws relating to the sale of alcoholic beverages/food and to refrain from any conduct or activity which would constitute the basis of a suspension or revocation of such license or permit; and to refrain from placing or attempting to place the aforesaid liquor license/food permit or special liquor permit in operation at any other location on the Premises.
- d. USER will provide copies of aforesaid license/permit to the Town prior to use of the Premises.

7. Waste, Nuisances and Unlawful Acts

- a. The USER covenants that it will not commit, or suffer any person on the premises at the USER'S invitation or by the USER'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 USER 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.

8. Condition of Premises

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

9. Improvements

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

10. Fixtures

The USER 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 USER shall not remove any such fixtures from the Premises.

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

11. Possession and Inspection

- a. During the term of this Agreement, and so long as the USER performs all the terms and conditions required hereunder, the USER shall enjoy all the rights to the Premises granted hereunder.
- b. The TOWN covenants that non-USER teams will not be allowed to use the game fields at the Premises after 5:00 p.m. each evening, and that in no event will non-USER teams be scheduled to use the Premises in conflict with USER activities.
- c. The TOWN shall have the right to visit and inspect the Premises, at all reasonable times, to ascertain whether the USER is complying with the terms and conditions of this Agreement.

12. Vacation of the Premises

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

13. Assignment

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

14. 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.

15. Default

In the event the TOWN determines that the USER is in default under any of the provisions hereof, the TOWN shall give the USER 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 USER shall have ten (10) days from the date of receipt of written notice, to cure such default. In the event the USER 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.

16. Covenant of Non-Discrimination

The USER 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.

17. The USER'S Employees/Volunteers

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

18. Insurance

- a. The USER agrees to maintain in effect, for the term of this Agreement, general liability and, if the USER intends to employ any persons on the Premises, State Industrial Insurance System (employer's liability), insurance indemnifying the USER and the TOWN against losses and/or claims arising from or during the USER'S occupation and use of the Premises.
- b. The USER shall maintain no less than _____ Dollars (\$_____) combined single limit in general liability insurance.
- c. The USER 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 USER shall not occupy the Premises until the TOWN has been furnished with certificates of insurance evidencing the USER'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.

19. Indemnification

It is agreed and understood that the USER 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 USER and/or any other person or persons, in connection with the USER occupation or use of the Premises under the provisions of this Agreement. The USER expressly covenants to relive 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 USER, its agents, contractors or employees.

20. 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.

21. 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.

22. 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 USER; nor shall the TOWN become liable for any debt or obligation incurred by the USER in the operation of any of the business or activities conducted on the Premises.

23. 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.

24. 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.

25. Modification

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

26. 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.

27. 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.

28. Time of the Essence

Time is of the essence of this Agreement.

29. 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

USER:
Melissa Godfrey

Duane Downing, Town Board Chairman

Melissa Godfrey

ATTEST:

Kat Galli, Deputy Town Clerk