



MEMORANDUM

Date: January 5, 2016

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in dark ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Rillito Park Foundation Operating Agreement**

During the Board of Supervisors meeting of December 15, 2015, the Rillito Park Foundation operating agreement was discussed and a number of questions were asked by the Board. Attached please find the answers to those questions for the Board's consideration of this matter on January 19, 2016.

Please note the Agenda item of January 19, 2016 does not involve a new agreement, particularly the agreement that was presented to the Board on December 15, 2015. The item is simply Board authorization to extend the existing operating agreement with the Rillito Park Foundation, which expired on July 1, 2015. That agreement provided for two additional one-year extensions with the mutual consent of both the County and the Foundation. We have previously communicated that the lessee, Rillito Park Foundation, attempted to extend this agreement; however, the County Attorney has indicated that the Foundation has no legal basis to compel the County to approve an extension. Approval of an extension is at the discretion of the Board. The Board may wish to extend for a one-year period, with the agreement expiring on July 1, 2016; or — given we are already halfway through the first one-year extension period — the Board could extend the agreement to terminate on July 1, 2017.

If the Board does extend the Operating Agreement, I recommend the Board clarify Section 7, Use of Premises, by adding the following language:

"7.3. Use of Infield. The operator shall not have control of the infield recreational facilities that lie inside the perimeter of the racing track, Monday through Friday, during the racing season. Provided there is no prescheduled soccer use of the infield athletic facilities, the operator may use the track facilities on the Friday before any Saturday horseracing event. The operator shall request the use of the infield for said days from the Natural Resources, Parks and Recreation Director, who will determine if the infield is not scheduled for other events."

This section is necessary in order to not have horseracing activities preempt previously arranged or scheduled soccer events on a Friday before horseracing events. Should soccer

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not be prescheduled, it would be acceptable to utilize the track facility for horseracing practice or training activities.

The Board should also consider requesting the Foundation reassemble the barns the County paid to salvage for their use.

The Board may also wish to add other terms and conditions to the existing operating agreement in addition to extending it.

It should be noted that the Rillito facilities are multiuse as identified in my December 21, 2015 memorandum to the Board. Soccer has been and will continue to be the predominant use at the facility. Scheduling by the Natural Resources, Parks and Recreation Department indicated soccer used the four fields inside the racetrack for 307 days, while live horseracing prevented activity on these fields for 23 days. Special events prevented sports use of the fields for 35 days. Hence, 16 percent of the time, either horseracing or special events precluded the use of the four fields inside the racetrack. During this time, all other soccer fields are available for public use.

CHH/lab

Attachment

c: Thomas Weaver, Chief Civil Deputy County Attorney
John Bernal, Deputy County Administrator for Public Works
Tom Burke, Deputy County Administrator for Administration
Nanette Slusser, Assistant County Administrator for Public Works
Tom Moulton, Director, Economic Development and Tourism

**Responses to December 15, 2015 Questions from the Board of Supervisors
Regarding the Rillito Park Foundation/Rillito Race Track Operating Agreement**

- 1. Who is responsible for the improvements listed in Exhibit C? And what is the cost of those improvements?**

Exhibit C was included in the proposed new agreement at the request of the Rillito Park Foundation. The intent was not to obligate the parties to do the listed improvements within any specific timeframe, but merely to list possible future projects. Projects would be actually funded and completed only with the parties' mutual agreement (see Section 4.5 of the agreement). Pima County has no current intention of investing in facility upgrades beyond basic maintenance for building safety, and the proposed agreement was not intended to obligate the County to provide funding for improvements. We can remove Exhibit C, and section 4.5, from the proposed new agreement.

- 2. Is the facility in compliance with the ADA? Are any of the listed improvements necessary to operate the facility?**

The Rillito Race Track is designated as a contributing facility by the US Department of the Interior and is, as an historic facility, eligible for waivers related to the ADA. The proposed improvements would bring the facility closer to compliance with modern building and safety standards, but it is currently operational "as-is." Allowing the facility to remain vacant would create an attractive nuisance; having it utilized actually lessens the County's legal exposure, per Risk Management.

- 3. Hasn't the BOS already established a policy of supporting use of Rillito for soccer, and isn't this new proposal inconsistent with that policy?**

The last time the issue of racing versus soccer was heard by the Board was in 2005 following completion of the Rillito Regional Park Advisory Committee's efforts. At that time, the Board unanimously approved all of the Committee's recommendations. This included the continued joint use of the facility by both soccer clubs and horseracing enthusiasts. There is no funding available to build additional sports fields or a new horseracing facility within the County. Rillito Regional Park has been a multiuse facility for decades. The various uses, such as special events, farmer's markets, horseracing, and soccer, all contribute to the funding needed to maintain the facility year round.

- 4. Should Rillito Regional Park be used solely by sports clubs or be a multiuse facility allowing events and horseracing?**

This is a policy decision for the Board. The facility is currently being used by a variety of users. Soccer and other sports activities are the primary uses at the Park, accounting for 84 percent of the utilization. The remainder of the use is divided between horseracing and special events; 6 percent and 10 percent, respectively.

Additionally, The University of Arizona Racing Program is integrated into the operations during the race meets. The students and instructors are onsite throughout the racing season and hold regular site visits with lecturers and industry leaders throughout the rest of the year.

5. Does the proposed operating agreement violate the Gift clause?

No. The Rillito Park Foundation is a nonprofit 501(c)(3) organization, as is the Tucson Soccer Academy (TSA). Pima County has both operating and lease agreements with a number of nonprofit organizations, such as the Pima Air and Space Museum, Colossal Cave Mountain Park, , and the Arizona Sonora Desert Museum, which manage County-owned facilities for the benefit of Pima County residents and make them available to the public at affordable rates.

6. Why was the last audit report “modified,” and have the identified issues been addressed?

According to the Pima County Finance Director, the term “a clean audit opinion” means a wholly unmodified opinion. The Rillito Racetrack’s audit opinion was “modified” because the operator did not follow Generally Accepted Accounting Principles (GAAP) when preparing its financial statements. That does not, however, indicate the auditor discovered any sort of fraud or other substantive impropriety. At issue were “Purse Overpayments”. In contrast to GAAP standards, State regulations direct commercial horseracing operators to treat overpayments as an asset “to the extent that they are recoverable.” (A.A.C R19-2-104) Hence, the comments in Note A and again in Note H, of the independent audit.

7. Who gets revenues for liquor sales?

Currently, the liquor license is held by the Pima County Fair Horse Racing Commission, which is an Arizona nonprofit corporation. The Commission has not received any revenue from liquor sales from any users/operators at the Rillito Regional Park for over 20 years, except for reimbursement of licensing fees. Liquor Liability insurance is the responsibility of the user/operator — in this case, the Rillito Park Foundation. All Rillito operating agreements, for the past 20 years or more, have required that the operator reinvest all net proceeds received from food and beverage sales, including sale of alcohol, in maintenance and improvement of the Rillito facilities. This is standard language in all Pima County recreational-facility operating agreements.

Under the proposed new operating agreement, Pima County would receive five percent of the gross revenues from all food and beverage sales if and when the liquor license is held by Pima County.

8. What happened to the Pima County Fair Horse Racing Commission?

Pima County fair horseracing has been conducted in Arizona since 1949 when races were held at the State Fairgrounds. A fair horseracing meeting is conducted by a "county fair racing association." Any county fair racing association may apply to the Arizona Racing Commission for one racing meet each year or up to four live racing days. The primary difference in operating a fair horseracing meet versus commercial racing is that two percent of the wagering goes to the racetrack rather than to the State.

The Pima County Fair Horse Racing Commission is Pima County's designated "fair racing association." In 1995, it ceased directly operating horseracing activities at Rillito and instead hired the Pima County Horsemen's Association to manage all horseracing.

Until this year, only one other county in Arizona operated a Fair Horse Racing meet at its own racetrack. In 2011, all racetrack subsidies from the State of Arizona to the 15 counties operating a Fair Horse Racing Meet – two of those operating both Fair Horse and commercial racing – stopped. In 2015, only Turf Paradise and Sonoita held a Fair Horse Racing meet.

9. Where is the asset list, the business & marketing plan, and the capital improvement list/plan that the current agreement calls for?

See the attached list of improvements made by the Rillito Park Foundation in 2015.

In 2014, the Rillito Foundation provided a business plan and marketing plan as part of the Request for Proposals process that resulted in the current operating agreement. The agreement does not require these plans be revised annually.

The proposed new agreement would require the operator to submit these items to the County annually, prior to the opening of the racing season.

10. Were the Tucson Soccer Academy and other sports-field users made aware of the request to add a fall horseracing schedule?

Yes. The Economic Development and Tourism and Natural Resources, Parks and Recreation Departments met on several occasions during the summer and fall of 2015 to discuss soccer and race dates with all parties. The meetings included representatives from the TSA, Arizona Youth Soccer Association and other stakeholders. There was an additional meeting with TSA, the Rillito Foundation, and the County Administrator's office at which the October schedule was discussed. TSA was offered the use of an alternative venue, the Kino Sports Complex, during the October race dates. At the time of the meeting and in subsequent telephone calls, TSA indicated this was acceptable.

2015 Rillito Park Foundation and Rillito Racing

Improvements to Rillito Race Track Facility

- 1 **1st Avenue Rillito Park Signage**
- 2 **Big-Top -**
40 x 60 foot frame tent for far west Grandstand lot area on chute near dumpsters
- 3 **Grandstand and Clubhouse Entries**
 - A clean and repair stucco
 - B new steel letter signage on top
 - C re-paint all
 - D chalkboard signs on face
- 4 **Grandstand Groundfloor**
 - A Under Stair Bars
 - 1 new chalkboard signs
 - 2 paint and repair
 - B Northwest Concession
 - 1 new signage
 - 2 reclad concession stand
 - C Mutual counters
 - 1 banners on steel X-bracing at each end
 - 2 bathroom screen walls to hide from concession area
- 5 **Grandstand Bleacher Area**
 - A steam clean bleachers
 - B clean glass
 - C new carpet on aisle
 - D add seat numbers to backs of far east end bleachers for Reserved Seating
- 6 **Mezzanine**
 - A decorations for bars.
- 7 **Paddock breezeway**
 - A extend bar counter toward north
 - B add bar height shelves and stools for patrons on paddock breezeway brick walls
 - C signage
 - D screen walls for ladies and men's rooms
- 8 **Paddock**
 - A new v-mesh fencing, paint posts and rail
 - B realign fencing to expand spectators.
 - C relandscape center area and perimeter
- 9 **Jockey room**
 - A clean and paint
 - B refurbish sauna

- C signage
- D green screen applied to exterior fence.

10 Clubhouse

- A relocate paddock area bar
- B remove old tv stands throughout
- C add temporary screen walls to bath entries
- D add video wall to main bar area
- E add booths and tables to bar area
- F build screen wall in far east room for office

11 Exterior

- A new signage with logos above doors and at gable ends
- B paint cornice on West end of Grandstand

12 General

- A re-wire for video and sound (Added over 100 new televisions)
- B add security system
- C general cleaning
- D line out parking spaces in lot
- E request three lanes of traffic for access and egress off of First Avenue.
- F add sand and recondition track surface

Improvement Costs: \$250,000