



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 12/15/2015

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Rillito Park Foundation

Project Title/Description:

Multi-Year Non-Exclusive Operations Agreement at Rillito Racetrack Park for professional horse racing meet

Purpose:

Conduct AZ Department of Racing (ADOR) sanctioned horse racing meet at Rillito Racetrack Park; Management of Racing Complex Special Events sites (five-year initial term with an option of up to four 5-year renewals).

Procurement Method:

RFP

Program Goals/Predicted Outcomes:

Operate the historic horse racing facility with professional sanctioned live racing; improve the facilities.

Public Benefit:

Provide professional sports entertainment/recreation. Generate incremental tourism development through racing. General revenue to operate all functions of Rillito Regional Park.

Metrics Available to Measure Performance:

Annual General Audit; monthly attendance and financial reporting to County.

Retroactive:

No.

Original Information

Document Type: CT Department Code: ED Contract Number (i.e., 15-123): 16-163

Effective Date: 01/01/2016 Termination Date: 12/31/2041 Prior Contract Number (Synergen/CMS):

☐ Expense Amount: \$ ☒ Revenue Amount: \$ \$250,000 (initial term)

Funding Source(s):

Cost to Pima County General Fund: 0.00

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Effective Date: New Termination Date:

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$

Funding Source(s):

Cost to Pima County General Fund:

REC 0715AM0909 PCD CLK OF RM
AP3

To COB: 12-7-15

Addendum

32 pgs (3)

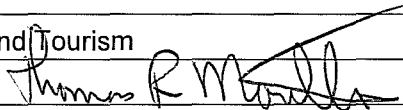
Procure Dept 12/07/15 AM 09:09

Contact: Thomas R. Moulton

Department: Economic Development and Tourism

Telephone: 520-724-7355

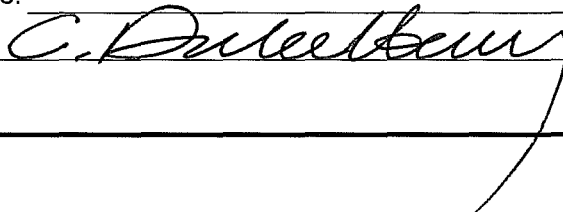
Department Director Signature/Date: _____



Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)





MEMORANDUM

Date: December 4, 2015

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

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Update on 2016 Racing Season at Rillito Regional Park**

In follow-up to my November 17, 2015 memorandum, the Rillito Park Foundation (RPF) has provided their independent audited financial statements for Fiscal Year 2014/15. The financial statements and the independent auditors' report are attached for information and review, and copies of the adjusted financial statements are contained within the audit report.

The audit reports no findings of concern. The RPF Board of Directors will submit a final signed version by December 15, 2015; and as is our standard practice, the audit will be reviewed by the County's Finance Department.

RPF received a provisional license from the Arizona Department of Racing (ADOR) to operate racing in 2016, but RPF must have a current operating agreement to receive final approval from ADOR.

Pima County has worked closely with the primary users of Rillito Regional Park to develop an agreement that continues to allow maximum use of the facility by soccer and other sports clubs, while still allowing adequate time for the annual races. The proposed operating agreement differs from past agreements in that it allows racing both in the late winter and fall. However, total racing days remain the same at 18. The agreement term has been extended from one year with two, one-year renewals to five years with a maximum of four, five-year renewals. The 25-year term is typical for County-owned attractions and allows the race operators the stability necessary to attract additional investment capital to the site.

Our Natural Resources, Parks and Recreation and Economic Development and Tourism Departments are both responsible for the operation of the Park and the numerous events held at this site. They will continue to work with all users to maximize the use of the site and the revenues received for its ongoing operations and maintenance.

The proposed agreement provides an opportunity to fully utilize the region's largest field sport facility while retaining our southwestern racing heritage.

CHH/mjk
Attachment

c: John Bernal, Deputy County Administrator, Public Works
Nanette Slusser, Assistant County Administrator, Public Works
Chris Cawein, Director, Natural Resources, Parks and Recreation
Tom Moulton, Director, Economic Development and Tourism

Procure Dept 12/07/15 PM08:46

RILLITO RACING, INC.
(a wholly owned subsidiary
of Rillito Park Foundation)
FINANCIAL STATEMENTS,
AND INDEPENDENT AUDITORS' REPORT
Year ended June 30, 2015

CONTENTS

	PAGE
INDEPENDENT AUDITORS' REPORT	1
FINANCIAL STATEMENTS:	
STATEMENT OF FINANCIAL POSITION	3
STATEMENT OF ACTIVITIES AND CHANGE IN NET ASSETS	4
STATEMENT OF CASH FLOWS	5
NOTES TO FINANCIAL STATEMENTS	6

INDEPENDENT AUDITORS' REPORT

Board of Directors
Rillito Racing, Inc.
Tucson, Arizona

We have audited the accompanying financial statements of Rillito Racing, Inc. (a wholly owned subsidiary of Rillito Park Foundation), which comprise the statement of financial position as of June 30, 2015, and the related statements of activities and change in net assets, and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Basis for Qualified Opinion

As more fully explained in Note G to the financial statements, the Company records purse overpayments as a receivable pursuant to Arizona Administrative Code Title 19, Chapter 2 Arizona Racing Commission. In our opinion, to be in conformity with accounting principles generally accepted in the United States of America, purse overpayments should be expensed as incurred and recoveries of purse overpayments recognized in the period they are realized. This constitutes a departure from accounting principles generally accepted in the United States of America. The effect of this departure from generally accepted accounting principles increases the change in net assets and unrestricted net assets by \$217,072.

Opinion

In our opinion, except for the effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Rillito Racing, Inc. as of June 30, 2015, and the change in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

R&A CPA
A Professional Corporation

Tucson, Arizona
December 7, 2015

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

STATEMENT OF FINANCIAL POSITION

June 30,

	2015
ASSETS	
CURRENT ASSETS:	
Cash and cash equivalents	\$ 460
Accounts receivable, net of allowance for doubtful accounts of \$741	26,338
Purse overpayment (Note H)	217,072
Due from Rillito Park Foundation	3,862
Inventory	13,835
Prepaid expenses	17,444
<i>Total current assets</i>	<i>279,011</i>
LONG-TERM ASSETS:	
Property and equipment, net of accumulated depreciation	328,635
Deposits	11,000
<i>Total long-term assets</i>	<i>339,635</i>
<i>TOTAL ASSETS</i>	<i>\$ 618,646</i>
LIABILITIES AND NET ASSETS	
CURRENT LIABILITIES:	
Accounts payable	\$ 181,274
Credit cards payable	39,229
Due to horsemen	16,419
Unclaimed mutuel tickets	24,045
Notes payable to directors	75,000
Accrued interest	6,897
<i>Total current liabilities</i>	<i>342,864</i>
COMMITMENTS AND CONTINGENCIES (Note I)	
NET ASSETS:	
Unrestricted	275,782
<i>TOTAL LIABILITIES AND NET ASSETS</i>	<i>\$ 618,646</i>

The accompanying notes are an integral part
of these financial statements.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

STATEMENT OF ACTIVITIES AND CHANGE IN NET ASSETS

Year ended June 30, 2015

RACING REVENUES:

Concessions	\$ 531,470
Pari-mutuel wagering commission	506,074
Hospitality	341,790
Racing purse support	325,097
Off-season events	30,671
Admissions	27,483

<i>Total racing revenues</i>	1,762,585
-------------------------------------	------------------

RACING EXPENSES:

Concessions	305,092
Pari-mutuel wagering expense	185,662
Hospitality	59,376
Horsemen's purse payouts	515,726
Facility	290,816
Racing operations	203,684
Off-season events	9,671
Admissions	38,526

<i>Total racing expenses</i>	1,608,553
-------------------------------------	------------------

<i>Increase in net assets from racing operations</i>	154,032
---	----------------

OTHER OPERATING (INCOME) EXPENSES:

Contributions	(359,576)
General and administrative	238,996
Marketing	57,252

<i>Total other operating (income) expenses</i>	(63,328)
---	-----------------

<i>Increase in net assets from operations</i>	217,360
--	----------------

OTHER (INCOME) EXPENSES:

Organizational and startup costs	83,312
Interest income	(110)
Interest expense	8,351

<i>Total other (income) expenses</i>	91,553
---	---------------

<i>CHANGE IN NET ASSETS</i>	\$ 125,807
------------------------------------	-------------------

Unrestricted net assets, beginning of year	\$ 149,975
--	------------

Change in net assets	125,807
----------------------	---------

Unrestricted net assets, end of year	\$ 275,782
--------------------------------------	-------------------

The accompanying notes are an integral part
of these financial statements.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

STATEMENT OF CASH FLOWS

Year ended June 30, 2015

Cash flows from operating activities:	
Change in net assets	\$ 125,807
Adjustments to reconcile change in net assets to net cash provided by (used in) operating activities:	
Depreciation	20,016
Changes in operating assets and liabilities:	
Accounts receivable	(26,338)
Purse overpayment	(217,072)
Due from Rillito Park Foundation	(3,862)
Inventory	(13,835)
Prepaid expenses	(17,444)
Deposits	(11,000)
Accounts payable	181,274
Credit cards payable	39,229
Due to horsemen	16,419
Unclaimed mutuel tickets	24,045
Accrued interest	6,897
<i>Net cash provided by operating activities</i>	<u>124,136</u>
Cash flows from investing activities:	
Purchase of property and equipment	<u>(348,651)</u>
<i>Net cash used in investing activities</i>	<u>(348,651)</u>
<i>NET DECREASE IN CASH AND CASH EQUIVALENTS</i>	(224,515)
Cash and cash equivalents at beginning of year	<u>224,975</u>
Cash and cash equivalents at end of year	<u><u>\$ 460</u></u>
Supplemental disclosure of cash flow information:	
Interest paid	<u><u>\$ 1,454</u></u>

The accompanying notes are an integral part
of these financial statements.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies consistently applied by Rillito Racing, Inc. (the “Company”) in the preparation of its financial statements follows.

Organization and Business Activity

The Company is a wholly owned subsidiary of Rillito Park Foundation (the “Foundation”) that was incorporated under the laws of the state of Arizona on March 27, 2014 to operate horse racing and related activities at Rillito Race Track (the “Track”) in Tucson, Arizona. The Company derives its primary funding through operating county fair and commercial horse race meets from January through April. The Company offers live horse racing and pari-mutuel wagering as authorized under its permit granted by the Arizona Racing Commission (the “Commission”). The Company has contracts/agreements entitling them to a percentage of off-track-betting revenue generated by off-track-betting simulcasts within Pima County of TP Racing, LLLP (“Turf Paradise”).

Basis of Presentation

The Company follows accounting standards set by the Financial Accounting Standards Board (“FASB”). The FASB sets accounting principles generally accepted in the United States of America (“GAAP”) that the Company follows to ensure the consistent reporting of its financial condition, changes in net assets and cash flows. References to GAAP issued by the FASB in the notes are to the FASB Accounting Standards Codification (“ASC”).

The Company’s financial statements have been prepared in accordance with FASB ASC 958, *Not-for-Profit Entities*. Under this authoritative guidance, the Company is required to provide financial statements which are prepared to focus on the Company as a whole and to present balances and transactions according to the existence or absence of donor-imposed restrictions.

Resources are reported for accounting purposes in separate classes of net assets based on the existence or absence of donor-imposed restrictions. In the accompanying financial statements, net assets that have similar characteristics have been combined into similar categories as follows:

- *Unrestricted* – Net assets that are not subject to donor-imposed restrictions. Unrestricted net assets may be designated for specific purposes by action of the Board of Directors.
- *Temporarily Restricted* – Net assets that represent resources restricted by the donor with the restriction being either time or purpose oriented.

Expenses are generally reported as decreases in unrestricted net assets. Expirations of donor-imposed restrictions that simultaneously increase one class of net assets and decrease another are reported as restriction releases between the applicable classes of net assets.

All contributions are considered to be available for unrestricted use unless specifically restricted by the donor. Amounts received that are designated for future periods or restricted by the donor for specific purposes are reported as temporarily restricted support. However, if a restriction is fulfilled in the same time period in which the contribution is received, the Company reports the support as unrestricted.

The Company reports gifts of goods and equipment as unrestricted support unless explicit donor stipulations specify how the donated assets must be used. Such contributions are recorded at their estimated fair value at the date of the gift.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(continued)*

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all liquid instruments purchased with a purchased maturity of three months or less to be cash equivalents. The Company places its cash and cash equivalents with various credit institutions. At times, such investments may be in excess of the FDIC insurance limits; however, management does not believe it is exposed to any significant credit risk on cash and cash equivalents.

Receivables

Receivables consist of uncollateralized amounts that are due from pari-mutuel simulcasts and other amounts receivable from horsemen. The Company uses the allowance method for recording bad debt based on a combination of historical collections and known conditions of unpaid amounts. Accounts receivable are written off when management considers them to be uncollectible. The allowance for doubtful accounts as of June 30, 2015 was \$741.

Purse Overpayments

Purse overpayments represents the net amounts due from the horsemen for payments made by the Company to the purse in excess of the required percentage of the handled wagers on each race. The amount of purse money to be paid to the horsemen is determined as a percentage of the wagered handle. The Company may provide purse payments that exceed the statutorily required purse which results in the recoding of a purse overpayment. The purse overpayments are recovered through receipt of the portion of Off-Track Betting (“OTB”) revenues due to the Company that are allocable to the horsemen’s account. Management anticipates fully recovering purse overpayment through future OTB revenue collections. The recording of the purse overpayment by the Company is required by the state of Arizona statute; however, as more fully explained in Note F this accounting treatment results in a departure from accounting principles generally accepted in the United States of America.

Property and Equipment

Equipment, furniture and fixtures are stated at cost, except for donated assets which are recorded at fair value at the date of gift. Depreciation is calculated using the straight-line method over their estimated useful lives of five or seven years.

Maintenance, repairs and minor renewals are expensed as incurred. Expenditures for additions and improvements are capitalized. When property and equipment are disposed of, the related cost and accumulated depreciation are removed from the accounts and any gain or loss is recognized. The Company is required by Pima County to make various improvements or conduct various maintenance and repair activities to the facilities at the Track in exchange for having access to use the Track. Costs to make the required improvements or repairs are capitalized and amortized over the period of estimated usage of the improvements.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(continued)*

Property and Equipment - continued

In accordance with FASB ASC 360, *Accounting for the Impairment or Disposal of Long-Lived Assets*, the Company periodically reviews the carrying value of long-lived assets held and used, and assets to be disposed of, for possible impairment when events and circumstances warrant such a review. Based on management's assessment, there was no impairment at June 30, 2015.

Inventory

Inventory is valued at the lower of cost (average cost) or market. Inventory for the Company consists of promotional clothing and liquor items from concessions.

Advertising

The Company expenses all advertising costs as incurred. Advertising expense for the year ended June 30, 2015 was \$52,665.

Income Taxes

Generally, as an exempt organization, under Section 501(c)(3) of the Internal Revenue Code and Section 43-1201.4 of the Arizona Revised Statutes, the Company is exempt from federal and state income taxes and, accordingly, no provision for income taxes on not-for-profit activities has been made.

Accounting principles generally accepted in the United States of America clarify the accounting for uncertainty in income taxes by creating a framework to recognize, measure, present, and disclose in financial statements uncertain tax positions that have been taken or expect to be taken in a tax return. The Company's management believes there is no material possible existence of uncertain tax positions for which it is reasonably possible that reported total amounts could significantly differ from amounts that may be determined upon examination by taxing authorities. The Company is no longer subject to federal and state tax examinations by taxing authorities for years before 2011, unless specific conditions are met.

Donated Goods, Facilities and Services

Donated goods and space are valued at their fair market value. Donated services are recognized in the financial statements at their fair market value when the services received require specialized skill and the services are provided by individuals possessing those skills, and would typically be purchased if not provided by donation.

Although the Company utilizes the services of many outside volunteers, the fair value of these services is not recognized in the accompanying financial statements since they do not meet the criteria for recognition under GAAP.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE B – RACING OPERATIONS

The Company conducts live meets that start in January and run through the end of April in accordance with ARS §5-107.

Percentage of Handle Received as Commissions

Arizona fixes the maximum percentage of pari-mutuel commissions for on-track, simulcast and within the state off-track racing. The Company does not seek the maximum permitted commissions. The Company takes out the following track and horsemen's share:

	<u>One-Horse Pool</u>	<u>Two-Horse Pool</u>	<u>Three or More Horse Pool</u>
In-state handle	21%	22%	25%

Unclaimed Winnings

The Company receives or accumulates unclaimed pari-mutuel winnings. One year after the end of the race meet, the Company becomes legally entitled to the unclaimed pari-mutuel winnings from the previous season. Unclaimed pari-mutuel winnings are exempt from the provisions of the Revised Arizona Unclaimed Property Act (ARS 5-111). As of the year ended June 30, 2015, there was approximately \$24,045 in unclaimed pari-mutuel winnings.

Competition – Proliferation of Alternative Gaming

The Company's primary non-racing competition is from local Native American casinos with Las Vegas-style gaming. All 21 tribes in Arizona are either already involved in gaming or in the off-track planning stages. Currently, there are 22 operating casinos in Arizona.

Along with casino gaming, the Company also competes with a state-run lottery, year-round greyhound pari-mutuel racing and horse racing simulcasts, as well as internet gambling.

NOTE C – PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at June 30, 2015:

Equipment	\$ 75,160
Furniture and Fixtures	23,742
Improvements	<u>249,749</u>
	348,651
Less accumulated depreciation	<u>(20,016)</u>
<i>Total property and equipment, net</i>	<u><u>\$ 328,635</u></u>

NOTE D – NOTES PAYABLE TO DIRECTORS

In March 2014, the Company executed three promissory notes each for \$25,000 with three Directors of the Company. Each note bears interest at 7% per annum, and all unpaid principal and interest are due March 2016. The Company has not made any principal or interest payments on the loans as of June 30, 2015.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE E – PARI-MUTUEL REVENUE - SIMULCAST

The Company has an agreement that expired May 2015 with Turf Paradise to receive a commission fee of 1.86% of the net amount of the wagers (gross wagers less refunds and cancellations) accepted and received in Pima County at the Off-Track-Betting sites (“OTBs”). The Company also receives an additional commission fee of 2.79% of the net amount of wagers accepted and received at the OTBs on the days live racing is conducted at the Track. The additional commission shall not be received for more than nineteen days per year. Total simulcast commissions for the year ended June 30, 2015 from Turf Paradise amounted to \$112,024.

NOTE F – OPERATING AGREEMENT

The Company has a one year operating agreement with Pima County Office of Economic Development & Tourism (the “County”) to conduct horse racing at Rillito Park (the “Park”). The agreement provides the Company with non-exclusive access to the Park only for the purpose of conducting horseracing and related activities. Expense for the usage of the Park was \$67,821 for the year ended June 30, 2015. The operating agreement has been renewed for an additional year, expiring in June 2016. The Company may renew the agreement for one more additional year, by providing written notice at least 90 days prior to its expiration. The minimum annual fee for payments is based upon eight total racing days during each racing season plus an additional fee for each paid admission to the Track during race days. The annual fee is adjusted based on the actual racing days during each racing season and is based upon a base fee of \$1,750 per live race day plus \$0.50 per admission or \$450 per day for simulcast events held at the Park.

NOTE G – OPERATING LEASE

The Company has an agreement with True Center Gate to rent starting gate equipment. The agreement expires upon the completion of the 2017 racing season. Future minimum lease payments based a minimum of 18 live race days per racing season under this operating lease are as follows:

Years ending <u>June 30,</u>	
2016	\$ 7,200
2017	<u>7,380</u>
<i>Total</i>	<u><u>\$ 14,580</u></u>

NOTE H – DEPARTURE FROM GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Under accounting principles generally accepted in the United States of America, purse overpayments that exist at the end of a race meet should be expensed as incurred. However, under Arizona Administrative Code Title 19, Chapter 2 Arizona Racing Commission, purse overpayments should be treated as an asset to the extent that they are recoverable. In accordance with industry practice, management has elected to record the purse overpayments as receivables to be recovered through additional OTB revenue received from subsequent race meets. The effect of this departure from generally accepted accounting principles increases the change in net assets and unrestricted net assets by \$217,072.

Rillito Racing, Inc.
(a wholly owned subsidiary of Rillito Park Foundation)

NOTES TO FINANCIAL STATEMENTS

June 30, 2015

NOTE I – COMMITMENTS AND CONTINGENCIES

The operations of the Company are dependent on its ability to obtain a racing permit from the Arizona Department of Racing, as well as the ability to lease Rillito Park from Pima County. The lease expires June 2016. The Company's management is currently working with Pima County to obtain a 5 year lease for Rillito Park.

Additionally, the operations of the Company are dependent upon the off-track-betting agreement with Turf Paradise, which expired in May 2015. Renewal of this agreement is contingent upon the ability of the Company to obtain the racing permit described above.

NOTE J – RELATED PARTY TRANSACTIONS

The Company received grant contributions from Rillito Park Foundation totaling \$350,000 for the year ended June 30, 2015.

NOTE K – SUBSEQUENT EVENTS

Accounting principles generally accepted in the United States of America require the disclosure of the date through which subsequent events were evaluated when determining whether adjustment to or disclosure in the financial statements is required. However, the guidance does not change the definition of a subsequent event (i.e. an event or transaction that occurs after the balance sheet date but before the financial statements are issued). The Company evaluated subsequent events through December 7, 2015, which represents the date the financial statements were available to be issued.



September 16, 2015

To Whom it May Concern -

This letter is to certify that The Ruboyianes Tax Company, PLLC analyzed, made appropriate adjustments to, and balanced Rillito Racing, Inc. Quickbooks general ledger to conform with generally accepted accounting principles, in preparation of the audit to be performed by R & A CPA's. This was done for the period of July 1, 2014 through June 30, 2015.

Copies of the adjusted financial statements are attached.

Troy Ruboyianes, CPA, Owner
The Ruboyianes Tax Company, PLLC

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation

Balance Sheet

As of June 30, 2015

Accrual Basis

	Jun 30, 15
ASSETS	
Current Assets	
Checking/Savings	
Rillito Food & Beverage #5107	489.02
Rillito Park Events #5324	30.20
Rillito Racing Inc. Ckg #2559	154.25
Rillito Racing Inc. Ckg #8052	-1,386.69
Rillito Racing Purse Ck #5115	1,080.94
Total Checking/Savings	367.72
Accounts Receivable	
Accounts Receivable	
Overages/Shortages	2,310.40
Accounts Receivable - Other	32,114.04
Total Accounts Receivable	34,424.44
Total Accounts Receivable	34,424.44
Other Current Assets	
Cash on Hand	93.00
Inventory Asset	
Food Inventory	1,422.00
Hats/Shirts Inventory	3,066.79
Liquor/Beer Inventory	9,346.01
Total Inventory Asset	13,834.80
Purse Overpayment	205,806.26
Total Other Current Assets	219,734.06
Total Current Assets	254,526.22
Fixed Assets	
Accumulated Depreciation	-23,364.17
Equipment	75,159.62
Furniture and Fixtures	23,741.99
Total Fixed Assets	75,537.44
Other Assets	
ADOR Funds	15,000.00
Construction/Leasehold Improv.	249,749.41
Prepaid Insurance	7,444.09
Starting Gate Deposit	6,000.00
Total Other Assets	278,193.50
TOTAL ASSETS	608,257.16
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	160,823.53
Total Accounts Payable	160,823.53
Credit Cards	
Wells Fargo - Visa #2380	9,228.82
Total Credit Cards	9,228.82
Other Current Liabilities	
Accrued Interest Payable	6,896.76
Due To/From Rillito Foundation	-3,862.18
Horsemen's Account Due	16,419.18

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation
Balance Sheet
As of June 30, 2015

Accrual Basis

	Jun 30, 15
Mutuels Dept. Liability	
Outstanding Tickets Added	55,464.39
Outstanding Tickets Paid out	-31,819.74
Settlement pay	401.09
Total Mutuels Dept. Liability	24,045.74
Wells Fargo-LOC Mastercard#3896	29,999.52
Total Other Current Liabilities	73,499.02
Total Current Liabilities	243,551.37
Long Term Liabilities	
Loans from Directors	75,000.00
Total Long Term Liabilities	75,000.00
Total Liabilities	318,551.37
Equity	
Unrestricted Net Assets	218,571.44
Net Income	71,134.35
Total Equity	289,705.79
TOTAL LIABILITIES & EQUITY	608,257.16

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation

Profit & Loss

Accrual Basis

July 2014 through June 2015

	Jul '14 - Jun 15
Ordinary Income/Expense	
Income	
Dept.1- Wagering & Racing	
Racing Purse Revenue	
Entry Fees	64,400.00
Horsemen's Misc. Fees	28,000.00
Sponser Added Money	18,435.00
Track Added Money	202,996.00
Total Racing Purse Revenue	313,831.00
Wagering Revenue	
Export Simulcasting Fees Due RR	3,148.08
Import Simulcast Mutuel Comm.	46,179.79
Live On Track Pari-Mutual Comm	332,027.64
OTB Revenue Collection Jan-May	112,024.13
Surplus (Breakage) Income	12,693.55
Total Wagering Revenue	506,073.19
Total Dept.1- Wagering & Racing	819,904.19
Dept.2-Sales,Marktg,Hospitality	
Hospitality	
Clubhouse Seating	52,388.25
Grandstand - Box Seats	10,765.00
Memorial Race Sponsors	14,100.00
Preferred Parking	27,514.80
Hospitality - Other	43,785.90
Total Hospitality	148,553.95
Sales	
Gate Ticket Sales	198,271.00
Merchandise	
On-Site Merchandise	12,779.66
Total Merchandise	12,779.66
Program Advertising	9,279.00
Program Sales	5,423.75
Total Sales	225,753.41
Total Dept.2-Sales,Marktg,Hospitality	374,307.36
Dept.3-Concessions Revenue	
Beer & Liquor	425,581.29
Food & Soft Drinks	
Food - Clubhouse	7,358.75
Food - Grandstand	1,880.46
Food - Permitted Vendors	3,600.00
Food & Soft Drinks - Other	117,050.00
Total Food & Soft Drinks	129,889.21
Total Dept.3-Concessions Revenue	555,470.50
Dept.4, Off-Season Events Rev.	
Concessions	
Beer & Liquor	11,899.71
Food & Soft Drink	2,387.32
Total Concessions	14,287.03
Facility Rental	
Small Events/Charity Events	11,676.08
Total Facility Rental	11,676.08

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation

Profit & Loss

Accrual Basis

July 2014 through June 2015

	Jul '14 - Jun 15
Services, Security, Parking Services	4,718.12
Total Services, Security, Parking	4,718.12
Total Dept.4, Off-Season Events Rev.	30,681.23
Total Income	1,780,363.28
Gross Profit	1,780,363.28
Expense	
Bank Service Charges	
Reconciliation Discrepancies	-24.09
Bank Service Charges - Other	5,300.73
Total Bank Service Charges	5,276.64
Dept.1 -Wagering & Racing	
Horsemen's Purse Payout Acct.	
Horsemen's Deposit Payouts	11,905.06
Horsemen's Purse Payout Acct. - Other	503,821.02
Total Horsemen's Purse Payout Acct.	515,726.08
Racing Operations	
Accounting Program Data	9,425.00
Asst. Starter/Gate Crew Pers.	23,208.23
Camera Crew Personnel	5,936.25
Outriders Personnel	8,716.88
Photo Finish/Video	15,325.00
Racing Secretary Personnel	71,543.04
Racing Supplies	3,100.25
Starting Gate Rental	9,298.80
Track Maintenance Crew	39,163.94
Valets Personnel	82.50
Veterinarians Personnel	3,600.00
Waste Disposal	4,402.48
Water Truck	3,237.92
Racing Operations - Other	6,643.74
Total Racing Operations	203,684.03
Wagering Expense	
ADOR Regultry. Wage Assmnt. Fee	11,100.96
Export Simulcasting Fees	14,642.52
Import Simulcasting Fees	19,972.14
Interface Fees	1,350.00
Live on Track Fees	11,250.00
Live/Import/Export Per Day Fee	4,350.00
Money Room Personnel	5,411.88
Money Room/Mutuel Supplies	63.01
Mutuel Department Personnel	69,714.90
Simulcast Hub to Hub Connection	7,219.57
Tote/Rental Expense	33,385.61
Total Wagering Expense	178,460.59
Total Dept.1 -Wagering & Racing	897,870.70
Dept.2-Sales,Mrktng,Hospitality	
Hospitality	
Entertainment-Horsemen's Dinner	50.00
Hostess Personnel	13,219.12
Parking Attendants	25,932.74
Parking Lot Supplies/Expenses	10,797.05
Hospitality - Other	183.01
Total Hospitality	50,181.92

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation
Profit & Loss

Accrual Basis

July 2014 through June 2015

	Jul '14 - Jun 15
Marketing	
Advertising - Newsprint	10,113.40
Advertising - Promotions	8,313.04
Advertising - Radio	14,920.00
Advertising - Television	13,099.00
Advertising/Promotion Supplies	4,274.86
Donations, Gifts, Awards	5,653.06
Misc. for Program/Adds/Sponsors	878.64
Total Marketing	57,252.00
Sales	
Entrance Gate Personnel	9,193.86
Printing	32,055.26
Program Producer	6,470.50
Total Sales	47,719.62
Total Dept.2-Sales,Mrktng,Hospitality	155,153.54
Dept.3-Concessions	
Beer & Liquor	
Beer	66,132.36
Liquor	36,092.89
Beer & Liquor - Other	-17,762.40
Total Beer & Liquor	84,462.85
Concession Consultant	25,972.48
Concession Dept. Supplies	13,472.48
Concession Personnel	95,849.52
Credit Card Machine Fees	5,990.75
Food & Bev Inv. Control Staff	6,960.63
Food & Soft Drink	68,786.90
Total Dept.3-Concessions	301,495.61
Dept.4, Off-Season Events	
Concessions	
Beer & Liquor	2,495.30
Vendor Fees	1,101.00
Total Concessions	3,596.30
Facility Rental-Pima Cnty Rent	
Medium Events-1000-2499 Attendee	870.70
Small Events/Charity Events	8,945.50
Total Facility Rental-Pima Cnty Rent	9,816.20
Services, Security, Parking	
Parking	-145.90
Total Services, Security, Parking	-145.90
Total Dept.4, Off-Season Events	13,266.60

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation

Profit & Loss

Accrual Basis

July 2014 through June 2015

	Jul '14 - Jun 15
Dept.5- Administration/Facility	
Administration Expenses	
Administration Personnel	43,022.34
Armored Car	3,843.00
Audit	0.00
Auto Liability	855.00
Automobile/Gas Expense	624.16
Check Printing	632.87
Fees & Dues	3,317.59
General Liability	17,150.44
Insurance Expense	8,962.54
Interest Expense	223.03
Jockey's Insurance	40,926.67
Materials and Supplies	645.38
Meetings/Travel/Meals	4,037.61
Office Supplies	6,283.25
Payroll Deductions	9,551.43
Payroll Taxes Liability	24,954.03
Petty Cash - Office	2,817.00
Pima County Rent	38,200.00
Postage	1,053.46
Staff Shirts	671.70
Telephone/Internet Expense	1,819.20
Utilities	17,573.86
Administration Expenses - Other	507.16
Total Administration Expenses	227,671.72
Facility	
Ambulance	15,334.00
County Attendee Fee due	19,481.00
Equipment Rental	47,692.65
Facility Alarm System	149.82
Fuel & Oil	5,398.12
Maintenance Supplies	-257.45
Miscellaneous Expenses	35,438.01
Operation/Maintenance Personnel	70,945.02
Repairs and Maintenance	4,585.50
Security Personnel	94,993.85
Shuttle Services	1,049.00
Total Facility	294,809.52
Total Dept.5- Administration/Facility	522,481.24
Total Expense	1,895,544.33
Net Ordinary Income	-115,181.05
Other Income/Expense	
Other Income	
Donations/Build the Barns Fund	9,576.40
INTEREST PAYMENT BANK ACCT.	109.73
RPF Martin Funds	350,000.00
Total Other Income	359,686.13

Rillito Racing, Inc. Subsidiary of Rillito Park Foundation
Profit & Loss

Accrual Basis

July 2014 through June 2015

	Jul '14 - Jun 15
Other Expense	
Depreciation Expense	23,364.17
Interest Paid out on Loans	8,128.33
Non-recurring - Dept 1 - Wager	17,728.69
Non-recurring - Dept 2 - Sales	3,663.36
Non-recurring - Dept 4 - Off-S	4,445.00
Non-recurring - Dept 5 - Admin	47,444.85
Total Other Expense	104,774.40
Net Other Income	254,911.73
Net Income	139,730.68

Board of Supervisors to assist County in providing County Fair Horseracing meets for the benefit of the residents of Pima County.

2.1.4. County is authorized, pursuant to A.R.S. § 11-932, to enter into agreements for the management and operation of County public parks.

2.1.5. Operator desires to use the Complex at the Premises for horse racing and other related activities as outlined in this agreement. The Rillito Park Racetrack Complex (the "**Complex**") consist of the stables (now existing and a portion thereof to be constructed, reconstructed or relocated), upper and lower grandstand, clubhouse, jockey building, offices located in the lower clubhouse area, paddock area, racetrack (including the railings within the infield), and infields subject to section 7.2 below as designated on **Exhibit B**. The Complex *does not* include any sports fields unless noted otherwise, the pavilions, the parking lots or any other portion of the Premises not specifically designated on **Exhibit B**.

2.1.6. County and Operator desire to have Operator operate and conduct horse racing at the Complex during the period from January 1 through March 30 and up to six (6) weekend days in October subject to availability (the "**Racing Season**"), and to conduct other activities at the Complex year-round, except as provided in Section 7 below, according to the terms of this Agreement. All activities must be coordinated with the Pima County Natural Resources, Parks and Recreation (**NRPR**) special event master calendar coordinator to ensure compatibility with Premises operations.

3. Term and Renewal. The term of this Agreement is from January 1, 2016 through and including December 31, 2021 (the "**Initial Term**"). The parties may renew this Agreement for up to four (4) additional sixty (60) month periods (each, an "**Extended Term**," or the "First Extended Term", "Second Extended Term", and "Third Extended Term" as required by the context) upon such terms, as may be agreeable to the parties. If Operator wishes to renew this Agreement for an Extended Term, Operator shall provide written notice to County of its desire to renew the Agreement at least ninety (90) days prior to expiration of the Agreement. The First Extended Term shall be upon the same terms as the Initial Term unless all parties agree to any new terms and provided that Operator is not in default under the Agreement and has complied with all material terms herein. The parties may negotiate new and different terms to this Agreement for the Second Extended Term and the Third Extended Term provided that Operator is not in default under the Agreement and has complied with all material terms herein. If the parties are unable to agree to new terms for the Second Extended Term or the Third Extended Term, then the Annual Fee for such extended term shall be 110% of the Annual

Fee for the immediately preceding term, and all other terms and conditions shall be the same.

4. Fees.

4.1. Initial Term. Operator shall pay County an annual fee ("**Annual Fee**") for the use of the Complex during the Initial Term and each Extended Term equal to the greater of (i) fifty thousand dollars (\$50,000.00) for each annual period (the "Minimum Fee"), or (ii) five percent (5%) of the gross revenue derived by Operator from the Complex for each annual period. For purposes of this Agreement, "gross revenue" means all revenue received by Operator, including but not limited to all off track betting revenues derived from horse racing conducted at the Complex. "Annual Period" is the 12-month period commencing on January 1, and ending on December 31 of each year.

4.2. Payment. The Annual Fee is due in quarterly installments and payable as follows: (i) twenty-five percent (25%) of minimum fee on March 31, June 30, September 30 and December 31 of each Annual Period, and (ii) the balance (if any) forty-five (45) days following the end of each Annual Period.

4.2.1. Payments received 1-15 days late shall be assessed a \$50 penalty. Payments more than 15 days late shall be assessed an additional \$50 penalty. If Operator has failed to make full payment 30 days from the Due Date interest will accrue at ten percent (10%), as allowed by A. R. S. §44-1201, unless a court judgment reduces the rate.

5. Utilities and Services.

5.1. Utilities. During the Racing Season, Operator is solely responsible if applicable to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, security services and all other services and utilities (the "Utility Charges") supplied to the Complex during the racing season. Notwithstanding the foregoing sentence, Operator will pay the Utility Charges for the Clubhouse, Jockey Room, Grandstand and Stables area year-round.

5.2. Interruption of Services. County shall not be liable to Operator if any utilities or services, whether or not furnished by County hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond County's reasonable control, nor shall any such termination relieve Operator of any of its obligations under this Agreement. County shall have no liability to Operator if any utility service is interrupted by the utility provider or otherwise unless the interruption is caused by County.

6. Taxes. Operator shall be responsible for payment of all taxes, if any, whether personal property taxes, income taxes, or any other taxes that are or may be assessed relating to any use of the Complex by Operator; provided, however, Operator shall not be responsible for any real property taxes that may be assessed against the Complex or other taxes that may be assessed against improvements located on the Premises.

7. Use of Complex.

7.1. Use of Complex. County hereby permits Operator to use the Complex year round and (i) the infields outside of the Racing Season, subject to section 7.2 below.

7.2. Use of Infields. The use rights granted herein for the infield are intended to be exclusive only for racing days during the racing season and any Friday during the racing season prior to a scheduled racing weekend. County agrees that County shall not utilize the infield for any other event or function during the Racing Season which would interfere with Operator's actual conducting of horse racing. However, on any weekend for which Operator has not scheduled Live Racing during the Racing Season, or at any other time, County reserves the right to schedule other events including but not limited to youth sporting events on the infield, such as soccer games and tournaments as long as the use does not interfere with horse racing operations as allowed by Arizona Department of Racing (ADOR). Operator's use of the Complex outside of the Racing Season is subject to and shall not interfere with access to and use of the infield by County or any entity, group or activity to whom County grants rights to use the infield. Except as stated above, nothing herein contained shall prevent County from granting other or similar licenses or privileges to any other person, firm, corporation for the infield after the racing season, or be construed to lessen the powers and privileges granted County under the constitution and laws of the State of Arizona.

7.3. Use of Pavilions. County hereby permits Operator to utilize the Pavilions with the Premises except for Saturday and Sunday from 6am-1pm when the Heirloom Farmer's Market is operating in the Pavilions pursuant to a separate agreement with the County. In the event the Farmer's Market decides not to operate on Saturday, then the Operator may utilize the Pavilions. Use of Pavilions may not interfere with any other operations of the Premises.

8. Racing Dates.

8.1. Fair Racing. Commission may, in conjunction with Operator or individually, apply annually for County Fair horse racing dates during the Racing Season through the Arizona Department of Racing ("**ADOR**"). Operator shall cooperate with the Commission to, in conjunction with Operator, use the Complex for the purpose of conducting County Fair horse racing meets authorized by ADOR, and for the related stabling and training of horses. As soon as Operator learns of the ADOR approved County Fair racing dates, Operator shall promptly notify County of the authorized dates for conducting the County Fair meets.

8.2. Commercial Racing. Operator shall apply annually for Commercial horse racing dates during the Racing Season through ADOR. For any Commercial racing dates outside the period of January 1st through March 31st inclusive of any Racing Season, Operator shall obtain prior approval of County prior to applying to ADOR for such Commercial racing dates. Operator shall use the Complex solely for the purpose of conducting Commercial horse racing meets authorized by ADOR, and for the related stabling and training of horses. As soon as practicable after such dates have been approved by ADOR, Operator shall promptly inform County of the authorized dates for conducting the meets. During the Racing Season, Operator may conduct Dark Day Simulcast horseracing events, including simulcast wagering, in the Clubhouse for no additional cost, provided such events comply with all applicable laws and regulations.

8.3. Live Race Dates. This contract authorizes racing dates to be held any weekend day from January 1 – March 31 and up to six (6) days in October. Live Race dates after October 2016 must be reserved annually at least twelve (12) months in advance from the beginning of October 1. Race days in October may be cancelled up to three (3) months prior to the first October race day. Any cancellation of race days after this may be subject to a cancellation fee of up to five hundred dollars (\$500.00). On any weekend for which Operator has not scheduled Live Racing during the Racing Season, County reserves the right to schedule youth sporting events or other events on the infield, including but not limited to soccer games and tournaments. Operator may not schedule more than 18 days of racing each year unless approved in writing by the County in advance of the racing season.

8.4 Outside Dates. Operator is permitted to conduct Dark Day Simulcast horseracing events and other approved activities, including simulcast wagering, at the Complex in the Clubhouse during the Initial Term and Extended Terms outside the Racing Season. Portions of the main parking lot may be available subject to other uses. Operator must coordinate all such events with the NRPR Special Events Calendar Coordinator to ensure

compatibility with other areas within the Premises. All such events must comply with all applicable laws and regulations.

8.5. County Right to Preempt. Provided that (i) County informs Operator at least eighteen (18) months in advance, and (ii) ADOR approves replacement racing dates for any lost racing dates during the same Racing Season, In the event that any ADOR approved replacement racing dates fall outside the normal Racing Season as defined herein, the Racing Season will be extended to encompass those replacement racing dates. County has a right to pre-empt a future potential live race meet day during the racing season in the event that a major regional or national sports tournament requires the use of the infield sports fields within the Complex. County will endeavor to notify Operator as far in advance as possible should such a condition arise, and will work with Operator to replace any lost racing dates in a given racing season.

9. Operation and Management of the Complex.

9.1. On-site Operating Agent. Operator shall operate and manage the Complex for both the County Fair Horseracing and Commercial Horseracing meets. Operator shall, at Operator's sole cost and expense employ a full time, experienced, ADOR-approved horse racing operating agent to organize, conduct, promote, and manage all horse racing activities at the Premises during the term of this Agreement, subject to ED&T's written approval of the operating agent selected by Operator. Operator may also contract with Rillito Racing, Inc., an Arizona non-profit corporation and a subsidiary of Operator ("RRI") to conduct any or all of Operator's horse racing operations and simulcast wagering pursuant to this Agreement.

9.2. On-site Operations and Maintenance Manager. Operator shall employ a full-time employee year-round or contract with an individual familiar with facility or attraction maintenance and experienced operating an attraction or event facility.

9.3. Obligations of Operator. Operator, either itself or through RRI:

9.3.1. May subcontract and delegate to RRI all rights and privileges under this Agreement for the use of the racetrack, stables, grandstand, clubhouse, jockey building, paddock area, infields and main parking lot useful in connection with horse racing during the Racing Season;

9.3.2. Shall obtain all necessary horse racing and business privilege licenses and organize, supervise, and conduct all horse racing activities at the Complex;

9.3.3. Shall abide by all local, state, and federal laws, ordinances, statutes, rules, regulations, policies, and executive orders as applicable to horse racing at the Premises, including but not limited to all rules and regulations of ADOR;

9.3.4. Shall employ and compensate, at its own expense, all those persons necessary to fulfill the obligations of this Agreement;

9.3.5. May provide concessions that Operator and County deem appropriate, including alcoholic beverages, provided that County will endeavor to obtain a government liquor license from the Arizona Department of Liquor Licenses and Control for the sale of alcoholic beverages at the Premises. Unless and until County obtains such government liquor license, Operator shall negotiate with Commission for the use of its liquor license;

9.3.6. Shall conduct no activity or provide any service that is unlawful or offensive.

9.3.7. Shall conduct all of its operations at the Premises at its own expense and without financial or in-kind contributions from County except those specifically agreed to herein. Operator shall not otherwise suggest, state, or imply that County will participate, guarantee, or assist in any financial or other obligation undertaken by Operator with respect to its operations on the Premises.

9.3.8. Fees Charged to Public. Any admission fees which Operator may charge to the public may be assessed in an amount that has received prior written approval by the Director of the Pima County Economic Development and Tourism Department ("**ED&T**"), and such fees may only be increased or decreased with such prior written approval. ED&T shall review and approve in advance all charges for food and beverage sales and other concessions sold to the public by Operator, provided that such approval shall not be unreasonably withheld.

9.3.9. Personal Assets, Fixture Inventory. Operator will retain ownership of all trade fixtures and business equipment and furnishings and other personal property (collectively "**Fixtures**") from time to time installed in, on or about the Premises by Operator at its expense. Operator may remove any such Fixtures at any time during the Term and must remove all Fixtures prior to the expiration of the Term, except those Fixtures that County agrees, in writing, may be left on the Premises. Upon any removal of Fixtures, Operator must promptly repair any and all resulting damage to the Premises. Any Fixtures not removed at the expiration of the Term will become the property of County without payment to Operator. Operator must reimburse Landlord for any costs and expenses incurred by County in removing

any Fixtures that are left in place by Operator without County's prior written permission, and repairing any resulting damage; this covenant will survive expiration or termination of this Agreement. Operator shall at all times maintain a complete inventory of all of Operator's Fixtures that Operator maintains at the Complex. Operator shall provide County with an updated copy of its Fixture inventory at least annually during the term of this Agreement.

9.3.10. Business Plan. Operator shall prepare and present a comprehensive business plan to include but not be limited to a financial and marketing plan for the use of the Complex to County for review and for comment prior to the racing season for each annual period under this Agreement. County shall have the right each year to provide comments to Operator on the business plan, and Operator shall, within a reasonable time after receiving those comments, make any reasonable revisions requested by County and shall submit a revised business plan for County approval and Operator implementation.

10. CONCESSIONS AND RELATED ACTIVITIES.

10.1. Authority of Operator.

10.1.1. Permitted Contracts. Operator shall have the authority to operate and conduct concessions (including, but not limited to, food, drink, souvenirs, printed material and similar items), and related activities under subcontract agreements with third parties on the Premises which are consistent with the use of the Complex as a Public Park. Written contractual agreements are required for any such services and County must be provided with any and all agreements entered into for such services.

10.1.2. Permits. If food is served on the Premises, all appropriate food permits must be obtained and all Pima County health regulations shall be complied with.

10.1.3. Alcohol. Subject to section 9.3.5 above, Operator may serve and sell alcoholic beverages for consumption at the Complex provided Operator complies with applicable liquor laws, any applicable County policies governing the on-site service of liquor, and provides County with certificates proving that Operator has acquired the required insurance set forth herein and names County as additionally insured under such policies.

10.1.4. Third Party Contractual Agreements (Subcontractors). All contractual subcontracts with third parties for the operation of the Complex or the operation of concessions or other activities on the Premises shall be subject to the prior approval of the County.

11. Rules.

Operator shall promulgate rules for the Complex, including but not limited to the following:

11.1. There shall be no overnight accommodations on-site, except for security personnel approved by ADOR and except for individuals temporarily residing in self-contained recreational vehicles or similar units having self-contained sanitary facilities that care for horses residing overnight. Any such overnight occupancy shall be limited to only that necessary for the actual conduct or support of horse racing at the Complex and approved in writing by the County;

11.2. Enforcement of a no alcohol or drugs rule except for the sale of alcohol pursuant to an authorized liquor license covering the Premises under sections 9.3.5 and 10.1.3 above; and

11.3. Enforcement of a ten (10) p.m. noise curfew. Operator shall comply with all applicable City of Tucson ordinances, including but not limited to noise abatement and reduction provisions of the Tucson City Code.

12. Revenues.

12.1. Operator shall collect and account separately for (i) the fees generated at the Complex by horse racing, entrance fees, pari-mutuel revenue, off-track betting and the amounts collected from concessionaires, licensees and subcontractors during the Racing Season, and (ii) all fees generated by the operation of the Complex for activities other than horse racing (collectively "**Gross Revenues**," and separately, "Horse Racing Revenues" and "non-Horse Racing Revenues"). The Horse Racing Revenues will be accounted for and reported in accordance with ADOR's requirements. Operator shall use all Gross Revenues to maintain, operate and improve the Complex (including the funding of general business operations and overhead related to the use of the Complex), unless ADOR requires the Horse Racing Revenues to be expended exclusively on activities and facilities directly related to horse racing, in which case the non-Horse Racing Revenues will be expended to maintain, operate and improve the other facilities. After payment of the Annual Fee to County, Operator shall use all **Net Income** (the amount by which

Operator's gross revenues exceeds Operator's reasonable and necessary expenses of operating and maintaining the Complex, including any fees remitted to County hereunder) for continued operation of the Complex. Net Income shall be determined on an annual basis in accordance with generally accepted government accounting principles. Operator will not include any capital expenditures as offsets or deductions to income in determining its net income pursuant to this Agreement. Income, revenues and payments generated from activities outside the Complex, such as off-track betting revenues from other race tracks featuring horse racing from non-Rillito horseracing, for example but not by way of limitation, or donations, are not included in determining Gross Revenues.

12.2. Operator acknowledges that the Premises are a publicly-owned facility, and that this Agreement is being entered into by County to ensure operation of the Complex for the benefit of the public and not for the pecuniary benefit of Operator.

12.3. Operator and its officers, employees, and representatives shall not enter into any agreement with any entity or person with respect to the Complex or Operator's operations at the Complex that will result in a direct or indirect pecuniary benefit to any person who is, or within the five (5) years preceding the transaction was, an officer, director, employee or representative of Operator or a member of such person's immediate family (meaning parents, siblings, and descendants). Notwithstanding anything in the foregoing sentence to the contrary, a transaction shall not be impermissible if the potentially interested or benefited individual discloses the possible conflict or benefit together with all related material facts and the majority of the disinterested members of Operator's board of directors determines the transaction is in Operator's best interests and is fair and reasonable, provided that Operator files with the Clerk of the Board of Supervisors of County a notice regarding the existence of such conflict.

12.4. Operator shall not compensate any member of Operator's management staff in a manner that, in County's reasonable judgment, is substantially in excess of the range of compensation normally available for an employee of a nonprofit organization of a type similar to Operator.

13. Books and Records.

13.1. Records. Operator shall keep and maintain proper and complete books, records and accounts of all operations pursuant to this Agreement, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of County. Operator shall retain all records relating to this Agreement at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

13.2. Audited Financial Statements. Operator shall provide to County a copy of an audited financial statements and report from an independent certified public accountant prepared in accordance with Generally Accepted Accounting Principles and Generally Accepted Government Auditing Standards (GAGAS) no later than four months after operators fiscal year end. The audit will account for all activities on the premises including but not limited to racing activities. In addition, Operator shall provide County with unaudited profit and loss financial operating statements, including attendance numbers, monthly by the 15th of each month

14. Repairs and Maintenance.

14.1. Repairs by Operator. Subject to County's obligations in Section 14.4, Operator shall, during the term of this Agreement during the Racing Season, at Operator's sole cost and expense, keep the Complex, including all landscaping located thereon, and all exterior and interior, including but not limited to electrical, plumbing, structural and mechanical components thereof, in good, clean, safe condition and repair so as to keep the Complex fit and safe for the purposes contained in this Agreement. County must be notified in advance when substantial repairs are deemed necessary. All repairs must comply with applicable local, state, and national codes. Detailed records, including photographic documentation, of all repairs must be retained and submitted to County immediately upon completion of such repairs. Operator shall, at its sole expense, make all repairs to the Complex made necessary by reason of the negligence or intentional misconduct of Operator, its employees, licensees, invitees, subcontractors or agents. Operator shall be responsible for proper disposal of all waste generated at the Premises from use of the Premises for horse racing. Operator will perform repairs to all systems promptly in order to minimize waste or ongoing damage.

14.2. Agreement to Share Costs. Notwithstanding anything herein to the contrary, County and Operator may mutually agree to share costs associated with construction, maintenance and repair of the Complex in a manner different than that described in this Agreement if the parties mutually determine that such will be beneficial both to the Complex and to the general public

14.3. Negligence of County. Notwithstanding section 14.1, Operator shall not be obligated to perform repairs or maintenance to the extent that such repairs or maintenance are required as a result of the sole negligence or intentional misconduct of County, its agents, employees, or contractors, which repairs and maintenance County shall conduct at County's sole expense.

14.4. County's Option to Perform Maintenance and Repairs at Operator's Cost. If Operator is in default hereunder (after the expiration of the cure period set forth in Section 22 below, if applicable) because it fails to perform its maintenance or repair obligations hereunder, in addition to the remedies set forth in Section 23, County, without notice, may, but shall not be obligated to, perform Operator's obligations. All reasonable costs and expenses reasonably suffered or incurred by County in performing these obligations, which shall accrue interest at a per annum rate of ten percent (10%), shall be paid by Operator to County within thirty (30) days of notice thereof. Any such default by Operator shall not be considered cured until Operator has fully reimbursed County for the costs incurred in performing Operator's obligation hereunder plus interest.

14.5. Capital Improvements at Rillito Racetrack Park. The parties acknowledge immediate capital improvements to the Complex, including but not limited to the construction of or rebuilding of the portable stables, roof replacement of the clubhouse facility, extensive plumbing repairs of the jockey house and clubhouse commercial kitchen repairs are required to operate the Complex. The funding and projects will be mutually agreed to by the parties as indicated in **Exhibit C**. Additional provisions are provided in **Exhibit C** pertaining to capital improvements.

15. Property Insurance and Loss.

15.1. Insurable Property.

During the term of this Agreement, County shall maintain property insurance on the Complex. Operator shall insure its personal property.

15.2. Repair or Restoration In the Event of a Property Loss

In the event the Complex or any portion thereof are damaged, County shall have the option to: (1) repair, reconstruct or restore the Complex, in which event this Agreement shall continue in full force and effect or (2) give notice to Operator at any time after such damage that it will not repair, reconstruct or restore the Complex. The County will take whatever actions that needs to be taken to make the damaged property safe.

If County elects to not repair, reconstruct or restore the Complex, then Operator shall have thirty (30) days after receipt of notice from County to either terminate this Agreement as of the date specified in such notice, or to continue this Agreement in accordance with the terms hereof. In the event Operator chooses to continue the Agreement, Operator shall ensure that Operator's use of the Complex continues to comply with applicable law.

16. Improvements.

16.1. Right to Construct. Operator shall have the right to construct improvements to the Complex, provided that the Complex shall be maintained as a public park and the provisions of this section are complied with. All permanent improvements to the Premises become the property of the County.

16.2. Consent of County Required.

16.2.1. Operator shall not make any physical improvements, alterations, additions, or changes to the Complex (the Alterations) unless County is provided with prior written notice of the proposed Alterations (the "**Notice of Alterations**").

16.2.2. The Notice of Alterations shall include plans and specifications for the Alterations. County shall have thirty (30) days after receipt of the Notice of Alterations to approve or reject the proposed Alterations. Failure of County to respond to the Notice of Alterations within thirty (30) days after receipt of the Notice of Alterations by County shall be deemed approved. Listed approval times do not include any necessary regulatory review as required by Development Review Departments from the County.

16.2.3. Alterations expected to cost less than ten thousand dollars (\$10,000.00) each must be approved by County ED&T staff in conjunction with County NRPR staff, alterations expected to cost between ten thousand dollars (\$10,000.00) and one hundred thousand dollars (\$100,000.00) must be approved by the County Administrator, and any alterations estimated to cost over one hundred thousand dollars (\$100,000.00) must be approved by the Board of Supervisors.

16.2.4. County shall not unreasonably withhold consent to proposed Alterations; provided, however, it shall be reasonable for County to withhold consent if, among other reasons, the Alterations:

16.2.4.1. Adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Complex or affect the integrity of the Complex or the Complex features or its infrastructure;

16.2.4.2. Result in County, and not the Operator, being required to perform any work that County could otherwise avoid or defer;

16.2.4.3. Result in an increase in the premiums for any hazard or liability insurance carried by County or result in an increased risk of liability or pose a safety hazard; or

16.2.4.4. Result in an increase in the demand for utilities or services (including wastewater treatment) that County provides to the Complex.

16.3. No County Liability for Approval of Alterations. County's review of the plans and specifications shall be solely for the County's purposes and shall not imply that the County has reviewed the plans and specifications for quality, design, laws, compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by any County architects, engineers, or consultants, County shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Operator's indemnity set forth in the Indemnification Clause of this Agreement shall specifically apply to the construction drawings. County's review shall be to determine that the proposed Alterations are consistent with the purposes of this Agreement of providing recreational opportunities for the benefit of the residents of the County.

16.4. Construction of Improvements. All improvements shall comply with all applicable local building and safety codes. All construction contracts shall include an indemnification provision requiring the contractors to indemnify, defend and hold harmless the Operator and the County from all losses, claims, suits, demands, expenses, attorney's fees or actions of any kind or nature arising from the contractor's negligent or intentional acts, errors or omissions. Operator shall cause said contractors to obtain insurance coverage of a type and amount acceptable to County and to name the Operator and County as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements that exceed that Maximum Expenditure Amount, Operator shall deliver to County a complete and reproducible set of the plans and specifications of the improvement or buildings as built.

16.5. Indemnification by Operator. Operator shall indemnify, hold County harmless, and defend County against liability for any damage to property or injury to persons occasioned by any construction by Operator on the Premises.

16.6. Property of County. All improvements to the Complex shall become the property of County at the time they are placed thereon, and shall be surrendered to County upon the termination of this Agreement, free and clear of all liens and encumbrances of every kind, and in good and operable condition, reasonable wear and tear excepted.

16.7. List of Capital Improvements. Operator will submit to County annually on the anniversary date of this Agreement a full list of all capital improvements, including total cost thereof that Operator has made to the Complex during the previous Contract year. In addition the Operator shall include a list of any capital improvements proposed for the next Contract year along with their estimated costs.

17. Liens and Encumbrances.

Operator shall keep the Complex free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Operator. Notwithstanding the prohibition on liens on the Complex itself, Operator may encumber Operator's interest in this Agreement for the construction of improvements to the Complex and, to the extent required, County shall execute any documents required by a Lender in order to provide the Lender with a security interest in any of Operator's personal property improvements located on the Premises. County also shall execute consent, estoppel, non-disturbance and similar instruments reasonably requested by Operator's lenders; provided, however, County shall not be required to amend this Agreement or consent to additional notice or cure provisions as part of any such consent, estoppel, non-disturbance and similar instruments.

18. Environmental.

18.1. Hazardous Material. For the purposes of this section, "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Arizona, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

18.2. Hazardous Materials Prohibited; Clean Air Act. Operator shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Operator or Operator's agents, employees, contractors, or invitees without the prior written consent of County, other than such Hazardous Materials that are necessary or useful to Operator's business and will be used, kept, and stored in a manner that complies

with all laws regulating those Hazardous Materials. Operator shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.

18.3. Indemnity. In the event an Environmental Act occurs, Operator shall indemnify, protect, defend, and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities, or losses (including, without limitation, diminution in value of the Property or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Property or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Property or any part thereof, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) that arose or arises during or after the term of this Lease as a result of such contamination. This obligation of Operator to indemnify, protect, defend, and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration, or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material presence, as a result of any action or inaction on the part of Operator or Operator's agents, employees, contractors, or invitees, on the Property or the soil or groundwater on, under or adjacent to the Property, or elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Property. For purposes of this section 18.3, "Environmental Act" means an occasion in which:

18.3.1. Operator breaches the obligations stated in section 18.2;

18.3.2. The presence (whether consented to by County or otherwise) of Hazardous Material on the Property or on or in the soil or groundwater under or adjacent to the Property caused or permitted by Operator or Operator's agents, employees, contractors, or invitees results in contamination of the Property or such soil or groundwater;

18.3.3. Contamination of the Property or such soil or groundwater by Hazardous Material otherwise occurs for which Operator is legally liable to County for damage resulting therefrom; or

18.3.4. Contamination occurs elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Property.

18.4. Clean-Up. Without limiting the foregoing, if the presence of any Hazardous Material on Property or the soil or groundwater under or adjacent to the Property caused or permitted by Operator or Operator's agents, employees, contractors, or invitees results

in any suspected contamination of the Property or the soil or groundwater under or adjacent to the Property, Operator shall promptly notify County in writing and take all actions, at Operator's sole cost and expense, as are necessary to return the Property or such soil or groundwater to the condition existing prior to the introduction of any such Hazardous Material to the Property or to such soil or groundwater; provided that Operator shall first obtain County's approval of such actions, which approval County shall not unreasonably withhold so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

18.5. Pre-existing Contamination. Any Hazardous Materials contaminating the Property prior to Operator's possession of the Property will not result in liability for Operator under this Section 18 except to the extent such contamination is aggravated by the action or inaction of Operator.

18.6. Notices Regarding Environmental Conditions. Operator shall, within ten (10) business days following receipt, provide County with a copy of (i) any notice from any local, state, or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Operator or the Property alleging any violation of any local, state, or federal environmental law or regulation or requiring Operator to take any action with respect to any release on or in the Property or the soil or groundwater under or adjacent to the Property of Hazardous Material, or (ii) any notices from a federal, state, or local governmental agency or private party alleging that Operator might be liable or responsible for cleanup, remedial, removal, restoration, or other response costs in connection with Hazardous Material on or in the Property or the soil or ground water under or adjacent to the Property or any damages caused by such release.

18.7. Survival. Operator and County's obligations under this Section 18 will survive the expiration or earlier termination of this Agreement and vacation of the Premises.

19. Insurance.

19.1. Coverage. Operator shall maintain the following insurance during the term of this Agreement:

19.1.1. Commercial General Liability. Coverage must be at least as broad as ISO form CG 00 01 in an amount not less than \$2,000,000.00, covering the Property, endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10.

19.1.2. Commercial General Automobile Liability. Coverage must be at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000.00 for vehicles actually used in the operations at the Property (as compared to used for simple commuting).

19.1.3. Workers' Compensation. Coverage must meet the statutory limits with Employers' Liability coverage in an amount not less than: each Accident \$500,000.00; Disease-Each Employee \$500,000.00 with a Disease-Policy Limit of \$1,000,000.00, and Participant Accident Insurance Coverage with minimum limits to include: Accidental Death \$500,000.00; Medical Reimbursement \$1,000,000.00. Policies shall contain a waiver of subrogation against Pima County.

19.1.4. Liquor Liability Insurance: Occurrence Form (may be under CGL Policy or by specialized policy).

19.1.4.1. The Liquor Service Vendor, who is providing the bartender(s) for the event if applicable, shall also provide the Liquor Liability Coverage for the Operator.

19.1.4.2. The bartenders must be trained on applicable Arizona liquor laws.

19.1.4.3. Policy limits provided by the Operator shall be at least \$5 million per occurrence and \$5 million general aggregate.

19.1.4.4. This policy shall be endorsed to include Pima County as an additional insured.

19.1.5. Liability insurance is to cover all patrons and participants for any Operator managed events.

20. Additional Insurance Provisions

20.1 Incident Reports. By the 15th day of each month, Operator shall provide notice to County of any incident involving injury to persons or damage to property occurring at the Premises. If any such injury to persons requires emergency medical treatment, Operator shall contact County within one business day of such incident. County may investigate any incident involving injury to persons or property occurring at the Premises, and, if so, Operator shall provide County with all information available to Operator about such incident.

20.2. Insurance Certificates. Operator shall provide County with current certificates of insurance that show County as an additional insured where required in this Agreement. All certificates of insurance must provide for guaranteed thirty (30) days' written notice of cancellation, non-renewal, or material change.

20.3. Waiver of Subrogation. Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

20.4. Changes to Insurance Requirements. County may reasonably increase the limits or types of coverage from time to time as determined in the best interests of County by Pima County Risk Management.

20.5. Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

20.5.1. Additional insured shall be Pima County, its departments and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by Operator, even if those limits of liability are in excess of those required by this Agreement.

20.5.2. Each insurance policy shall contain a severability of interest's provision and shall waive subrogation against Pima County.

20.5.3. Operator's liability insurance coverage shall be primary insurance with respect to all other available sources.

20.5.4. Coverage provided by Operator shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

20.6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to County.

20.7. Acceptability of Insurers. Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. County in no way warrants that the above-required minimum insurer rating is sufficient to protect Operator from potential insurer insolvency.

20.8. Verification of Coverage.

20.8.1. Operator shall furnish County with certificates of insurance (ACORD form or equivalent approved by Pima County) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

20.8.2. All certificates and endorsements are to be received and approved by the Pima County Risk Manager before use commences under this Agreement. Each insurance policy required by this Agreement must be in effect at or prior to commencement of use under this Agreement and remain in effect for the duration of this Agreement. Failure of Operator to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement.

20.8.3. All certificates required by this Agreement shall include the Pima County project/contract number and the project number and description shall be noted on the certificates of insurance. County reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

20.9. Subcontractors. Operator's certificate(s) shall (i) include all subcontractors as insured under its policies or (ii) Operator shall furnish to County separate certificates and endorsements for each subcontractor, or (iii) subcontractor shall provide endorsements naming County as additional insured in form similar to that set forth above. All coverages for subcontractors shall be subject to the minimum requirements identified above.

20.10. Approval.

20.10.1. Any modification or variation from the insurance requirements in this Agreement shall be made by County's Risk Management Division, whose decision shall be final. Such action will not require a formal amendment to this Agreement, but may be made by administrative action.

20.10.2. Any construction or renovation projects on the Premises will require additional insurance coverage such as Builder's Risk insurance. Pima County Risk Management will provide the additional insurance requirements required for any construction or renovations.

20.11. Safety.

20.11.1. Operator will adhere to Federal, State and Local safety standards related to on-site activities. Compliance is to include relevant OSHA standards as well as the safety standards, codes or rules related to horse racing events, thereby

providing a safe environment for both the participants and the spectators.

20.11.2. Subject to approval of County Risk Management, a prominent sign shall be posted at the entrance to the racing area stating that by entering, every competitor, spectator, visitor, official, worker, or any other individual entering the racing area agrees to release and indemnify Pima County from any and all liability associated in any manner with said entry into the racing area.

21. Indemnification. To the fullest extent permitted by law, Operator shall defend, indemnify, and hold harmless County and County's officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost, and expense, including but not limited to reasonable attorney's fees and litigation expenses arising out of or resulting from the conduct or management of the Complex or any accident, injury, damage, or violation of law whatsoever occurring in or at the Complex allegedly caused in whole or in part by any act or omission of Operator or anyone directly or indirectly employed by Operator or Operator's agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts Operator may be liable.

22. Termination. Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County's obligations under this Agreement. Alternatively, and in addition to and independent of County's right to immediately terminate this Agreement for any of the listed incidents of default specified in Section 23 below, if at any time during the Term hereof in the judgment of County the Operator is not performing in accordance with the conditions of this Agreement, or is otherwise in material default of any other provision of this Agreement, County will provide written notice to Operator specifying the nature of the non-performance or default. A material default for purposes of this paragraph includes but is not limited to dissolution, bankruptcy, business stoppage, loss of Operator's non-profit corporate status, or transfer of a majority interest by or of Operator. If Operator fails to correct the non-performance or default, to County's satisfaction, within ten (10) days after receipt of such written notice, or if Operator fails to diligently pursue remedies for corrections which require more than ten (10) days to complete, County may terminate this Agreement. In the event County terminates this Agreement, Operator's right to possession of the Premises will immediately cease, and Operator will immediately vacate the Premises. County may pursue any other remedies provided by law for the breach of this Agreement. No right or remedy conferred or reserved is intended to be exclusive of any other right or remedy, and each is cumulative and in addition to any other right or remedy conferred or reserved in this Agreement. In the event of termination of this Agreement for any reason, County shall have no further obligation to Operator.

23. Default and Remedies.

23.1. Default. The occurrence of any one or more of the following events shall constitute a default (a "**Default**") and breach of this Agreement by Operator:

23.1.1. Vacation or Abandonment. The vacating or abandonment of the Complex, or any portion thereof, by Operator, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Operator.

23.1.2. Financial. The failure by Operator to account appropriately for revenues and expenditures, or any failure to use Net Revenues as required by Section 12.1 above, where such failure continues for a period of ten (10) calendar days after County sends notice of such default to Operator.

23.1.3. Insurance. The failure by Operator to maintain insurance policies as set forth above for any time; in which event Operator must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Operator shall, within ten (10) days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage, including any deductibles or losses within a self-insurance retention.

23.1.4. Non-payment of Fees. The failure by Operator to timely pay the Annual Fee or any other sum due from Operator to County under this Agreement, where such failure continues for a period of ten (10) calendar days after County sends notice of such default to Operator.

23.1.5. Gross Negligence. Operator or any employee or agent of Operator acts in a grossly negligent or intentionally wrongful manner and such results in significant injury to any person, or substantial damage to any of the Complex which County is required to repair under the terms of this Agreement.

23.1.6. Other Covenants. The failure by Operator to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Operator, where such failure continues for a period of ten (10) days after written notice thereof by County to Operator; provided, however, that if the nature of Operator's default is such that more than ten (10) days are reasonably required for its cure, then Operator shall not be deemed to be in default if Operator commences such cure within said ten (10) day period and thereafter diligently

prosecutes such cure to completion, provided such cure is completed within thirty (30) days of the notice by County.

23.1.7. Repeated Defaults. More than three (3) material Defaults by Operator, as set forth in this section in any calendar year, even if Operator cures the defaults within the applicable grace periods set forth above.

23.2. Remedies.

23.2.1. Termination by County. This Agreement may be terminated by County in the event of a Default by Operator, without advance notice and without further obligation by County.

23.2.2. Other Remedies. Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement, including without limitation, the right to recover all future Annual Fees, subject to the duty to mitigate.

23.2.3. Mediation. In the event there is a dispute hereunder that the parties cannot resolve between themselves, the parties agree there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The matter in dispute shall be submitted to a mediator mutually selected by Operator and County. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, Operator and County shall request the presiding judge of the Superior Court in and for the county of Pima, State of Arizona, to appoint an independent mediator. The cost of any such mediation shall be divided equally between Operator and County. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

24. Subcontractors. Operator will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that Operator is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

25. Signs. Operator may affix and maintain upon the Premises such signs as Operator deems appropriate; provided, however, such signs must comply with the City of Tucson Sign Code and must first receive the written approval of County as to type, size, color, location, copy and display qualities consistent with the historic nature of the Property. All signs will be installed, maintained, repaired or replaced at Operator's sole cost and expense. If County so requires, Operator will remove all signs at Operator's sole cost and expense in the event of termination or non-renewal of this Agreement.

26. Sustainability Plan and Waste Removal. Operator will haul away all materials and will prepare and implement an integrated waste management plan to re-use, recycle, and/or compost any consumable materials utilized in the performance of this Agreement, and will submit the plan for County review at least annually. Operator may comply with the requirements of this paragraph through a contract with the City of Tucson or another qualified waste hauler for the provision of commercial refuse service to the Premises.

27. Historic Compliance. Operator acknowledges that the Premises are listed in the National Register of Historic Places as a contributing property to the Pima County Rillito Race Track Historic District. Operator shall not make any alterations or improvements to the Premises without prior written approval of the plans from the County with concurrence by the State Historic Preservation Office ("SHPO"). Operator shall comply with any requirements or recommendations for changes in proposed construction plans or repairs by SHPO and County to ensure that the defining historic characteristics of the Premises are retained and enhanced. Section 16 controls how Operator will seek approval from County. As Operator seeks approval from County and SHPO, Operator shall follow the Secretary of Interior Standards for the Treatment of Historic Properties and SHPO's review procedures for the rehabilitation of historic properties listed in the National Register of Historic Places. Operator acknowledges that County may enter onto the Property at any time for project activities, studies, or construction.

28. Resource Protection.

28.1. Operator shall not discharge waste, byproducts, or materials that might result in harm to wildlife or to human water supplies onto the Premises or into water channels.

28.2. Operator shall take all reasonable measures to protect the scenic, historic, and aesthetic values of the area. Operator shall prevent soil erosion or gulying that might be caused by construction or improper utilization of resources.

28.3. Operator shall be responsible for all aspects of the maintenance of the Premises' landscaping, including but not limited to watering, fertilizing, trimming and maintenance

of any irrigation systems.

28.4. Operator shall secure the Premises and shall take all necessary steps and precautions to discourage vandalism and disorderly conduct, including calling appropriate law enforcement officers when necessary and assisting and cooperating in subsequent prosecutions.

28.5. Operator shall take all appropriate action to prevent fire damage to improvements, collections and natural resources on the Premises by complying with approved building, electrical or other safety codes and by complying with area closures and use restrictions imposed by State, City, or County laws, ordinances, or regulations.

28.6. Operator shall comply with all present and future laws or regulations regulating the environment, hazardous or toxic waste, ambient air, groundwater, surface water, and land use.

29. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

County: Tom Moulton, Director
Pima County Economic Development & Tourism
33 N Stone Ave, Ste. 830
Tucson, AZ 85701-1408

With a copy to: Chris Cawein
Director of NRPR
3500 W River Road
Tucson, Arizona 85741

Operator: Rillito Park Foundation, Inc.
c/o Frank B. DeFazio
1090 E. River Rd.
Tucson, AZ 85718

With a copy to: Allen R. True
9251 W. Twin Peaks Rd.
Tucson, AZ 85743

30. Miscellaneous.

30.1. Non-assignable. This Agreement shall not be assigned in whole or in part by Operator without first obtaining the written consent of County. County reserves the right to withhold approval at County's sole discretion.

30.2. Compliance with Applicable Law. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement and any disputes hereunder. Any actions relative to this Agreement shall be brought and maintained in a court of the State of Arizona in Pima County.

30.3. Binding Agreement. This Agreement shall be binding upon the Parties hereto, their permitted successors and assigns.

30.4. Non-Discrimination. Operator agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Agreement as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, Operator shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

31. Legal Arizona Workers Act Compliance.

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

31.1.1. County shall have the right at any time to inspect the books and records of Operator and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

31.1.2. Any breach of Operator's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section, is a material breach of this Agreement subjecting Operator 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,

Operator 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 County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

31.1.3. Operator shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially 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 requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the subcontractor's books and records to ensure that subcontractor is in compliance with these requirements. Any breach of this Section by subcontractor is a material breach of this Agreement subjecting subcontractor to penalties up to and including suspension or termination of this Agreement."

31.1.4. Any additional costs attributable directly or indirectly to remedial action under this Section shall be the responsibility of Operator. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of Operator's approved operation or critical milestones schedule, such period of delay shall be deemed excusable delay for which Operator shall be entitled to an extension of time, but not costs.

32. Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

33. Americans with Disabilities Act. Operator will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, except that Operator will not be required to construct, install or modify any existing improvements on or about the Premises to satisfy or comply with the foregoing.

34. Independent Contractor. The status of Operator is that of an independent contractor. Neither Operator, nor Operator's officers, agents or employees, are considered an employee of Pima County or entitled to receive any employment-related fringe benefits under the Pima County Merit System. Operator is responsible for payment of all federal, state and local taxes associated with any compensation received pursuant to this Agreement and shall indemnify and hold County harmless from any and all liability which County may incur because of Operator's failure to pay such taxes.

35. Authority to Contract. Operator warrants that it is a non-profit corporation in good standing with the State of Arizona and warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County shall not be liable to Operator or any third party by reason of such determination or by reason of this Agreement.

36. Full and Complete Performance. The failure of any Party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by any Party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

37. Severability. Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

38. Entire Agreement. This Agreement sets forth all the covenants, promises, agreements and understandings between the Parties concerning this Agreement, and there are no covenants, promises, agreements or understandings either oral or written between them except as herein set forth. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon the parties unless reduced to writing and duly executed by each of the respective parties to this Agreement.

Reminder of the page is blank

The Parties hereto have executed this Agreement on the day, month and year written below.

PIMA COUNTY, a body politic of the State of Arizona

Sharon Bronson, Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of the Board

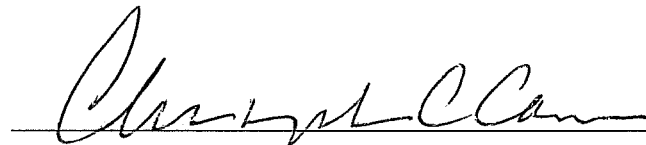
Date

REVIEWED AND APPROVED:



Tom Moulton, Director, Economic Development & Tourism

APPROVED AS TO CONTENT:



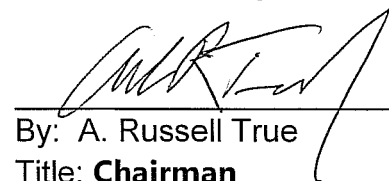
Chris Cawein, Director, Natural Resources, Parks and Recreation

APPROVED AS TO FORM:

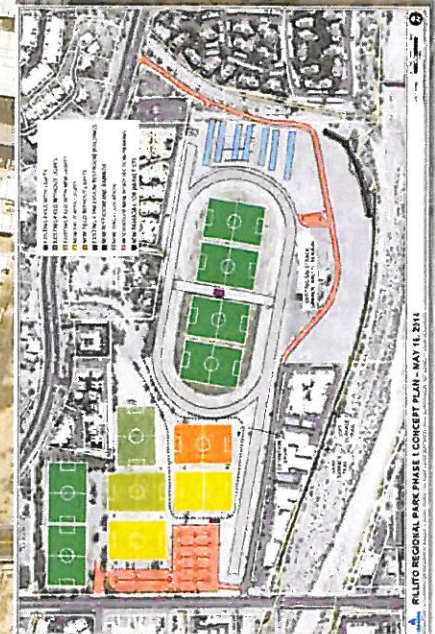
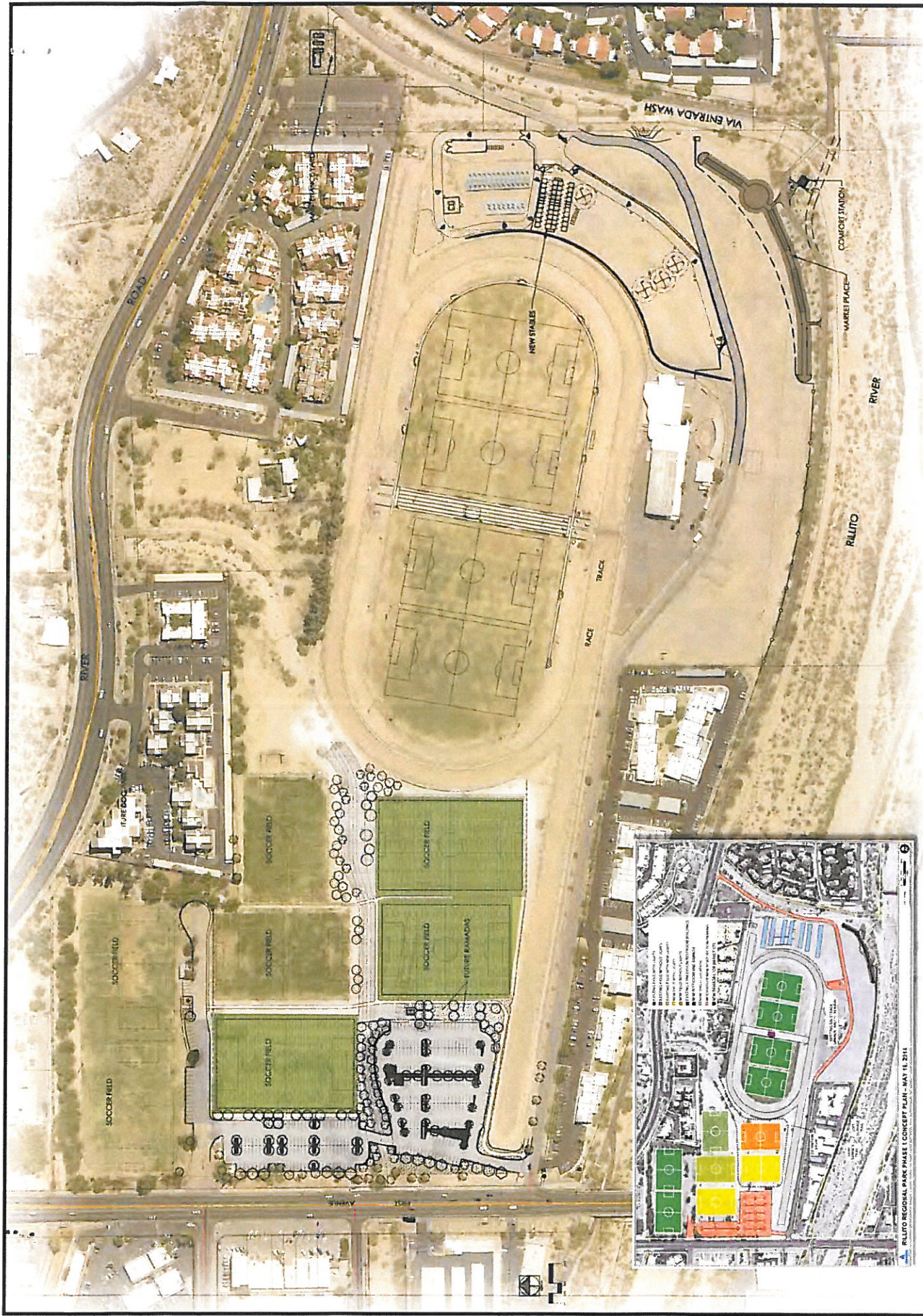


Tobin Rosen, Deputy County Attorney, Civil Division

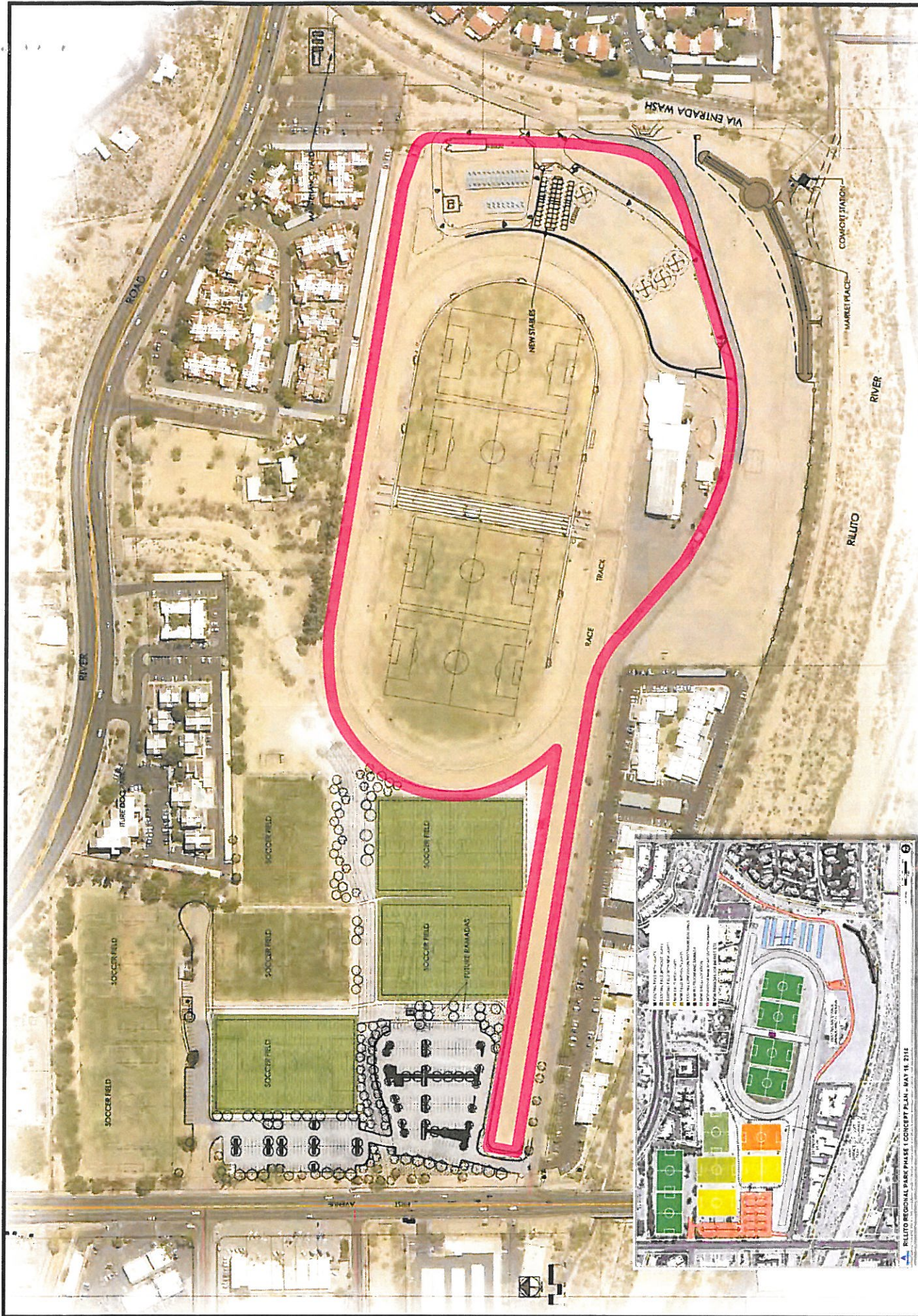
**OPERATOR: RILLITO PARK FOUNDATION, INC.,
an Arizona non-profit corporation**


By: A. Russell True
Title: **Chairman**

12/1/15
Date



Rillito Regional Park Premises - Exhibit A



Rillito Racetrack Complex - Exhibit B

EXHIBIT C

Rillito Park (Racetrack Complex) - Improvements and Renovations

Location	Projects	Responsible Party	
		County	Rillito
Jockey Room	Potable Water Repiping		x
	Swamp Coolers (2)		x
Lower Grandstand	Replace 3 Roll-up Doors -Grandstand with Bi-folding Gates	x	
	Lower Grandstand Floor Renovation	x	x
	Lower Grandstand Kitchen Hood Upgrade	x	
	Lower Grandstand Kitchen/Snack bar Floors replacements (3)	x	x
	Outside Track Viewing and Overflow Area by Clubhouse and around Grandstand - Patch, Crack Seal and Seal Coat Asphalt	x	x
	Restrooms ADA	x	
Upper Grandstand	Grandstand Stairs Carpeting Replacement		x
	Correct Emergency & exit lighting at Grandstand	x	
	Grandstand North Façade - strengthen & install support glass windows	x	
	Installing new Viewing Tower		x
Club House	Roof Renovation*	x	
	Kitchen Counter Upgrades to Stainless Steel		x
	Kitchen Hood upgrade to new code		x
	Kitchen Floor Replacement		x
	Additional Ladies Room Bathroom		x
	Grease Interceptor - add next to building if required		x
	Correct exterior wall packs & emergency lighting at points of egress	x	
	ADA Elevator (Lift) to Access Clubhouse/Grandstand		x
	ADA Improvements including Restrooms		x
Lower Club House	Walk-in Beer Cooler Replacement if old one not grandfathered		x
	Walk-in Food Cooler Replacement		x
	Renovate Offices as needed		x
Parking Lot	Regrade where necessary and add gravel and parking enhancements	x	
	Lights (if needed)	x	
General Facility	Grandstand Foundation - repair cracks in foundation	x	
	Facility Painting Interior and Exterior		x
	Install full automatic fire protection system throughout the facility	x	
	Install Fire Alarm System	x	
	Install Standpipes at all stairways	x	
	Portable ADA Path to Cross Track (2)	x	
Racetrack exterior	Railing - replace interior railing - old & brittle		x
	Rillito Park Asphalt Path Improvements	x	
Stables	Add stables as needed for Race Meet Opertion	x	x
* Mutually agreed Projects projected to be completed no later than 2025			
- Projects are not in any priority			
- Projects may be added or deleted. All parties must concur			