



MEMORANDUM

Date: June 26, 2014

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

From: C.H. Huckelberry
County Administrator 

Re: **Agreement from the Nonexclusive Operation and Maintenance of Rillito Racetrack**

Attached is an agreement for Board of Supervisors action on July 1, 2014 that would provide for County Fair Horseracing activities and other activities at Rillito Park with Rillito Racing, Inc. Rillito Racing, Inc. is a new County Fair Horseracing operator who may also provide for a limited number of commercial horseraces.

Please note the one-year term of the agreement and the minimum annual fee of \$14,000, as well as a standard fee of \$1,750 per event for any extended term or use of the property and a 50-cent per person surcharge for paid admission to the facilities during racing season.

The agreement also makes the operator liable for the full operating and maintenance costs of any facilities used for horseracing. The term of the agreement covers only those facilities used for horseracing. All other facilities remain under the direct control of the County through our Natural Resources, Parks and Recreation Department.

If you have any questions regarding this new agreement for County Fair Horseracing and limited commercial horseracing at Rillito Park, please contact me.

CHH/anc

Attachment

c: Hank Atha, Deputy County Administrator for Community and Economic Development
Tom Moulton, Director, Economic Development and Tourism
Chris Cawein, Director, Natural Resources, Parks and Recreation

<p>PIMA COUNTY DEPARTMENT OF: ECONOMIC DEVELOPMENT & TOURISM</p> <p>PROJECT: Agreement for the Non-exclusive Operation of Rillito Racetrack</p> <p>PARTIES: Rillito Racing, Inc., an Arizona non- profit corporation</p> <p>REVENUE CONTRACT</p> <p>AMOUNT: \$14,000.00 Annual Fee*</p> <p>TERM: 07/01/14 - 06/30/15</p>	
<p>* based on 8 total race days</p>	

**AGREEMENT FOR THE NON-EXCLUSIVE
OPERATION AND MANAGEMENT OF RILLITO RACETRACK**

1. **Parties.** This Agreement for the Non-exclusive Operation and Management of Rillito Racetrack ("**Agreement**") is made and entered into between PIMA COUNTY, a body politic of the State of Arizona (hereinafter referred to as "**County**"); and Rillito Racing, Inc., an Arizona non-profit corporation (hereinafter referred to as "**Operator**"). County and Operator are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Background and Purpose.**

2.1. County is the owner of the property located at 4502 North First Avenue, Tucson, Arizona, including the stables, grandstand building, track, infields, soccer fields, and parking lot commonly known as Rillito Regional Park (the "**Premises**"), as described on Exhibit A.

2.2. Operator is an Arizona nonprofit corporation created for multiple purposes, one of which is the furtherance of horse racing for the benefit of the residents of Pima County and surrounding areas.

2.3. County, by Resolution No. 1987-224, established the Pima County Fair Horse Racing Commission ("**Commission**") as an advisory body to the Pima County Board of Supervisors to assist County in providing County Fair Horseracing meets for the benefit of the residents of Pima County.

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

- 2.5. Operator desires to use certain facilities on the Premises for horse racing. The facilities (the "**Facilities**") consist of the stables (now existing and a portion thereof to be reconstructed or relocated), grandstand, clubhouse, jockey building, offices located in the lower clubhouse area, paddock area, racetrack (including the railings within the infield), and parking areas (now existing and hereafter to be constructed or relocated), as designated on **Exhibit B**. The Facilities *do not* include any soccer fields, the race track in fields, the parking lot on First Avenue, or any other portion of the Premises not specifically designated on **Exhibit B**.
- 2.6 County and Operator desire to have Operator operate and conduct horse racing at the Premises during the period from January 1 through April 5, 2015 (the "**Racing Season**") according to the terms of this Agreement.

3. Term and Renewal. The term of this Agreement is from July 1, 2014 through and including June 30, 2015 (the "**Initial Term**"). The parties may renew this Agreement for two (2) additional 12-month periods (each, an "**Extended Term**"), upon such terms as may be agreeable to the parties. If either party wishes to renew this Agreement for an Extended Term, that party shall provide written notice to the other party of their desire to renew the Agreement at least ninety (90) days prior to expiration of the Agreement. The parties may negotiate new and different terms to this Agreement prior to any renewal. Any renewal shall be in writing and signed by both parties.

4. Fees.

- 4.1. Initial Term. According to the duly adopted fee schedule for the Pima County Department of Natural Resources, Parks and Recreation, Operator shall pay County an annual fee ("**Annual Fee**") for the use of the Facilities during the Initial Term of Fourteen Thousand Dollars (\$14,000.00), calculated assuming a total of eight (8) racing days at One Thousand Seven Hundred Fifty Dollars (\$1,750.00) per racing day. Additionally, Operator shall pay County an additional fee ("**Additional Fee**") of Fifty Cents (\$0.50) for each paid admission to the Facilities during race days.

In the event that any scheduled racing days are cancelled due to weather or any other cause beyond the control of County, Operator will pay One Thousand Seven Hundred Fifty Dollars (\$1,750.00) to County for each such cancelled racing day.

- 4.2. Extended Term. Operator shall pay County an Annual Fee for the use of the Premises during the Extended Term, according to the duly adopted fee schedule for the Pima County Department of Natural Resources, Parks and Recreation, provided that the Annual Fee shall in no event be less than Fourteen Thousand Dollars (\$14,000.00). Additionally, Operator shall pay County the Additional Fee of Fifty Cents (\$0.50) for each paid admission to the Facilities during the racing season.
- 4.3. Payment. The Annual Fee and Additional Fee shall be due and payable to County on the earlier of thirty (30) days following the last race day or May 1 of each Racing Season. Operator shall separately account for all fees generated from Fair Racing and from Commercial Racing.

4.4. Adjustment to Annual Fee. The Annual Fee set forth in Sections 4.1 and 4.2 for the 2015 – 2018 Racing Seasons is based upon eight (8) total racing days during each Racing Season. The Annual Fee shall be adjusted to reflect an increase or decrease in the number of racing days, by multiplying the actual number of racing days by one-eighth (1/8) of the Annual Fee, or One Thousand Seven Hundred Fifty Dollars (\$1,750.00). For example, if the actual number of racing days in 2016 is ten (10), then the Annual Fee for the 2016 Racing Season shall be Seventeen Thousand Five Hundred Dollars (\$17,500.00). In the event the Pima County Board of Supervisors adopts amendments to the fee schedule for the Pima County Department of Natural Resources, Parks and Recreation during the term of this Agreement, the fees due from Operator to County shall automatically adjust to correspond with the amended fee schedule without the necessity of a formal amendment to this Agreement.

5. Utilities and Services.

5.1. Utilities. During the Racing Season, Operator shall be responsible to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, security services and all other services and utilities supplied to the Facilities.

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.

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 Facilities by Operator; provided, however, Operator shall not be responsible for any real property taxes that may be assessed against the Premises or other taxes that may be assessed against improvements located on the Premises.

7. Use of Premises.

7.1. Use of Facilities. County hereby permits Operator to use the Facilities for horse racing purposes only during the Racing Season, including the stabling, training, exercising and racing of horses, according to the terms and conditions of this Agreement. Operator may access and use the Facilities only during preparation for, conducting of and wrapping up activities after horse racing events. Except for conducting its ongoing maintenance obligations pursuant to Section 14 below, Operator shall surrender the Facilities to County at the end of each Racing Season in a clean and sanitary condition. Operator has had the opportunity to examine the Facilities and accepts the use of the Facilities in their "as is" condition as of the effective date of this Agreement.

- 7.2. Non-Exclusive Right. The rights granted herein are intended to be nonexclusive and shall in no way prohibit County from having access to or the use of the Premises for any reason whatsoever other than ADOR licensed live horse racing, except County agrees that it shall not utilize the Premises for any other event or function during the Racing Season which would interfere with Operator's actual conducting of horse racing. Nothing herein contained shall prevent County from granting other or similar licenses or privileges to any other person, firm, corporation, or shall be construed to lessen the powers and privileges granted County under the constitution and laws of the State of Arizona.

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 Premises 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 April 5th 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 Premises 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 and Commission of the authorized dates for conducting the meets. During the Racing Season, Operator may conduct Dark Day Simulcast horseracing events at the Premises, subject to availability of the Facilities and compliance with all applicable laws and regulations.

- 8.3 Outside Dates. Operator is permitted to conduct Dark Day Simulcast horseracing events at the Premises during the Initial Term and Extended Terms outside the Racing Season, subject to availability of the Facilities as determined by the County Natural Resources, Parks and Recreation Department and compliance with all applicable laws and regulations. The fees for such events will be set by ED&T and shall be tied to County's approved Natural Resources Parks and Recreation fee schedule.

9. Operation and Management of the Premises.

- 9.1. On-site Operating Agent. Operator shall operate and manage the Facilities for both the County Fair Horseracing and Commercial Horseracing meets. Operator has indicated to County that it will, and 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. ED&T initially approves Michael Weiss as the operating agent.

9.2. Obligations of Operator. Operator, either itself or through its on-site operating agent shall:

9.2.1. Obtain all necessary licenses and organize, supervise, and conduct all horse racing activities at the Premises;

9.2.2. 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;

9.2.3. Employ and compensate, at its own expense, all those persons necessary to fulfill the obligations of this Agreement, including the on-site operating agent referred to in Section 9.1 above;

9.2.4. Determine appropriate prizes for competitors engaged in meets;

9.2.5. Determine the type and extent of horse races to be scheduled;

9.2.6. Provide concessions that Operator deems appropriate during racing events, including alcoholic beverages, provided that Operator obtains the necessary state and local licenses and maintains in effect the insurance policies required by this Agreement. So long as Commission holds the liquor license from the Arizona Department of Liquor Licenses and Control for the sale of alcoholic beverages at the Premises, Operator shall negotiate with Commission for the use or relinquishment of the liquor license; and

9.2.7 Conduct no activity or provide any service that is unlawful or offensive

9.2.8 Operator 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 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.

9.3.1. 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 Facilities. Operator shall provide County with an updated copy of its Fixture inventory at least every six (6) months during the term of this Agreement.

9.3.2. Marketing Plan. Operator shall prepare and present a marketing plan for the use of the Facilities to County for review and for comment no later than September 15, 2014, and each subsequent September 15 of any year under this Agreement. County shall have until October 1 of each year to provide comments to Operator on the marketing plan, and Operator shall, within a reasonable time after receiving those comments, make any reasonable revisions requested by County and shall submit a revised marketing plan for County approval and Operator implementation.

10. CONCESSIONS AND RELATED ACTIVITIES.

10.1. Authority of Manager.

10.1.1. Permitted Contracts. Operator shall have the authority to operate and conduct, or contract with third parties to operate and conduct, concessions (including, but not limited to, food, drink, souvenirs, printed material and similar items), museums, and related activities on the Premises which are consistent with the use of the Premises as a Public Park.

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. Operator may serve and sell alcoholic beverages for consumption on the Premises provided Operator complies with applicable liquor laws and provides County with certificates proving that Operator has acquired the required insurance set forth herein.

10.1.4. Contracts Greater than One Year. All subcontracts with third parties for the operation of the Premises or the operation of concessions or other activities on the Premises which have a term of more than one year shall be subject to the prior approval of the Pima County Board of Supervisors.

10.1.5. Copies of Contracts. Operator shall provide to County current, fully executed copies of all agreements between Operator and any third parties relating to Operator's management or use of the Facilities or to any of Operator's activities at the Premises within thirty (30) days after entering into any such agreement.

11. Rules.

Operator shall promulgate rules for the Facilities, 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 Premises;

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; 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 all fees generated by the operation of the Facilities for horse racing, including but not limited to entrance fees, pari-mutuel revenue, and the amounts collected from concessionaires, licensees and subcontractors ("**Gross Revenues**"). Operator shall use all Gross Revenues to maintain, operate and improve the Facilities (including the funding of general business operations and overhead related to the use of the Facilities for horseracing). Operator shall use all **Net Revenues** (the amount by which Operator's gross revenues exceeds Operator's reasonable and necessary expenses of operating and maintaining the Facilities, including any fees remitted to County hereunder) for continued operation of the Facilities and for capital improvements on the Premises as deemed necessary by Operator. Net Revenues shall be determined on an annual basis in accordance with generally accepted government accounting principles.

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 Facilities 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 Premises or Operator's operations at the Premises 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 report from an independent certified public accountant prepared according to Generally Accepted Auditing Principles within sixty (60) days of completion of each racing meet. In addition, bi-weekly during the conducting of any horse racing at the Premises pursuant to this Agreement, Operator shall provide County with unaudited profit and loss financial operating statements, including attendance numbers, relating to the immediately preceding two (2) weeks of racing activity.

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, at Operator's sole cost and expense, keep the Facilities, including all landscaping located thereon, and all exterior, interior, structural and mechanical components thereof, in good, clean, safe condition and repair so as to keep the Facilities fit and safe for the purposes contained in this Agreement. All repairs must comply with applicable local, state, and national codes. Operator shall, at its sole expense, make all repairs to the Facilities 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. Repairs to mechanical systems, such as HVAC, shall be performed promptly in order to minimize any waste of utilities or water.

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 Facilities in a manner different than that described in this Agreement if it is mutually determined that such will be beneficial both to the Facilities 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. County Improvements to Rillito Regional Park. The parties acknowledge that County is in the process of developing and planning future improvements to Rillito Regional Park, including but not limited to the demolition of the block stable facilities and the relocation of the existing portable stable facilities on the west side of the park and the addition of new horse barn facilities to the east side of the park, and the possible construction of additional soccer facilities. County will endeavor to cooperate with Operator in the construction of any future park improvements to minimize the impact of the construction of any such improvements on Operator's activities pursuant to this Agreement. Operator acknowledges and agrees that the number of available horse barns at the Premises will be reduced during the term of this Agreement in conjunction with the demolition of old barn facilities and the construction of new barn facilities.

15. **Property Insurance and Loss.**

15.1. Insurable Property.

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

15.2. In the Event of a Property Loss

In the event the Facilities or any portion thereof are damaged, County shall have the option to: (1) repair, reconstruct or restore the Facilities, 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 Facilities. 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 Facilities, 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 Facilities continues to comply with applicable law.

16. Improvements.

16.1. Right to Construct. Operator shall have the right to construct improvements to the Facilities, provided that the Facilities shall be maintained as a public park and the provisions of this section are complied with.

16.2. Consent of County Required.

16.2.1. Operator may not make any improvements, alterations, additions, or changes to the Facilities (the "**Alterations**") without written consent by the County Administrator or his designee.

16.2.2. For any Alteration Operator shall provide County with prior written notice of the proposed Alterations (the "**Notice of Alterations**"). The Notice of Alterations shall include plans and specifications for the Alterations. County shall have forty-five (45) 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 forty-five (45) days after receipt of the Notice of Alterations by County shall be deemed approval.

16.2.3. 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:

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

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

16.2.3.3. 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

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

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 Facilities 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.

17. Liens and Encumbrances.

Operator shall keep the Facilities 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 Facilities itself, Operator may encumber Operator's interest in this Agreement for the construction of improvements to the Facilities 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

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 17.2;

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 17 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 17 will survive the expiration or earlier termination of this Agreement and vacation of the Premises.

19. Access to Premises. Access to the Premises by Operator prior to or after the Racing Season will be allowed in order to prepare for the racing season or perform maintenance or repair of any designated racing area as outlined in Section 14 with forty-eight (48) hours' notice to ED&T pursuant to Section 29.

20. Insurance.

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

20.1.1. 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.

20.1.2. 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 use for simple commuting).

20.1.3. 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.

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

20.1.4.1. 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.

20.1.4.2. The bartenders must be licensed to serve alcohol in Arizona.

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

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

20.1.5. Liability insurance is to cover all participating racers, racing staff members, horse owners, spectators and sponsors as well as the Operator.

20.2. 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.

20.3. 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 30 days written notice of cancellation, non-renewal, or material change.

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

20.5. 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.

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

20.6.1. 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.

20.6.2. Each insurance policy shall contain a severability of interests provision and shall waive subrogation against Pima County.

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

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

20.7. 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.

20.8. 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.

20.9. Verification of Coverage.

20.9.1. 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.

20.9.2. 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.

20.9.3. 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.

20.10. 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 coverage for subcontractors shall be subject to the minimum requirements identified above.

20.11. Approval.

20.11.1. 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.

20.11.2. 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.

20.12. Safety.

20.12.1. 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.

20.12.2. Every competitor, spectator, visitor, official, worker, or any other individual who is issued a pass or other credential permitting access to the racing area must sign a Release and Indemnity Agreement to include indemnification of Pima County, in a form acceptable to County. The release is to be signed prior to 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 Premises or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises 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 Facilities, 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 12.2 above, where such failure shall continue for a period of ten (10) calendar days after County sends notice of such default 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 shall continue 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 Facilities 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 shall continue 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/or 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 gullyng 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

Operator: Rillito Racing, 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. Nonassignable. 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 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 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website which is hereby incorporated into this Agreement as if set forth in full herein. 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, shall be deemed to be 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 will be deemed to be 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 shall be that of an independent contractor. Neither Operator, nor Operator's officers, agents or employees, shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Operator shall be 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. The Parties hereto have executed this Agreement on the day, month and year written below.

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

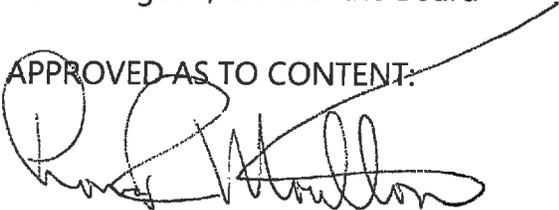
Date

ATTEST:

Robin Brigode, Clerk of the Board

Date

~~APPROVED AS TO CONTENT:~~



Tom Moulton, Director, Economic Development & Tourism

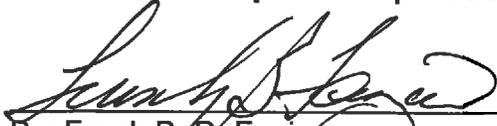
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APPROVED AS TO FORM:

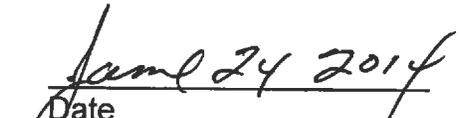


Tobin Rosen, Deputy County Attorney, Civil Division

**OPERATOR: RILLITO RACING INC.
an Arizona non-profit corporation:**

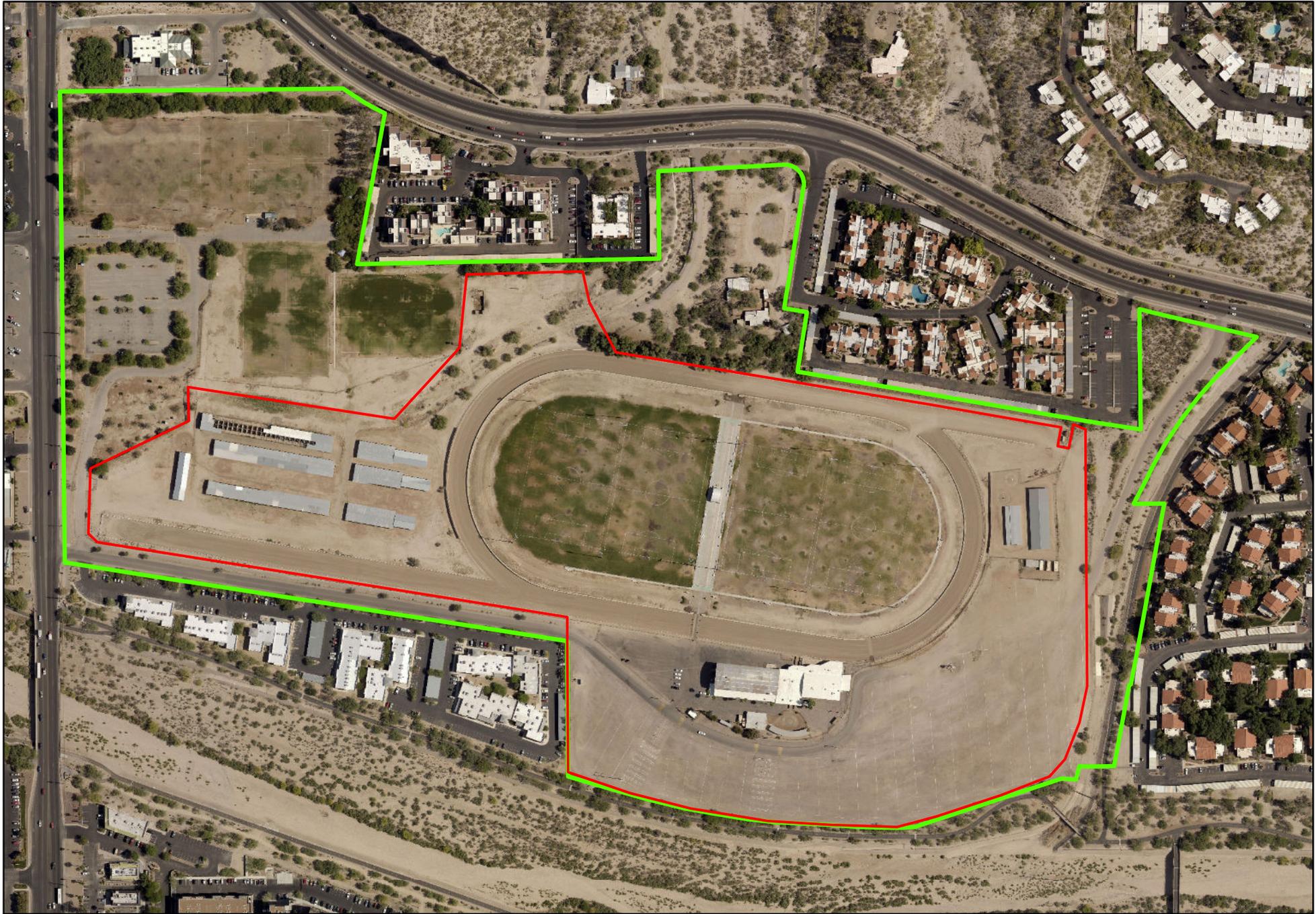


By: Frank B. DeFazio
Title: Secretary



Date

Exhibit A



RILLITO REGIONAL PARK

-  Racetrack Boundary
-  Rillito Regional Park

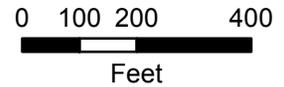
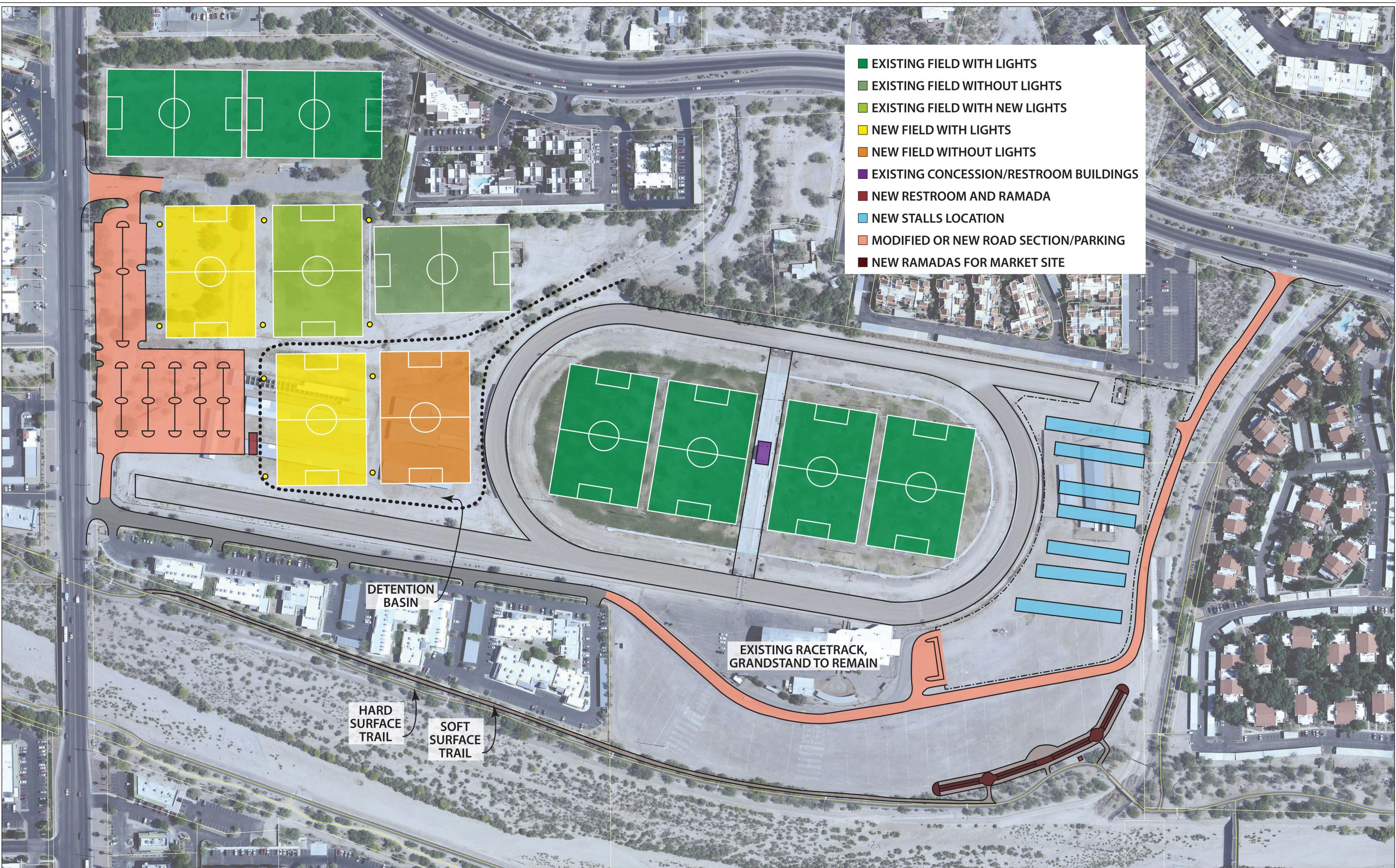


Exhibit B

- EXISTING FIELD WITH LIGHTS
- EXISTING FIELD WITHOUT LIGHTS
- EXISTING FIELD WITH NEW LIGHTS
- NEW FIELD WITHOUT LIGHTS
- EXISTING CONCESSION/RESTROOM BUILDINGS
- NEW RESTROOM AND RAMADA
- NEW STALLS LOCATION
- MODIFIED OR NEW ROAD SECTION/PARKING
- NEW RAMADAS FOR MARKET SITE



DETENTION BASIN

EXISTING RACETRACK,
GRANDSTAND TO REMAIN

HARD SURFACE TRAIL

SOFT SURFACE TRAIL