



City Council

Agenda Item

Subject: Authorization for the City Manager to sign the Derby Downs Lease agreement.
Meeting: City Council - Jan 02 2024
From: Dusty Rodiek, Director of Parks, Recreations & Forestry

BACKGROUND INFORMATION:

In the current environment, the Parks & Recreation Dept. has limited resources to dedicate to the programming and the specific maintenance needs of a specialized equestrian facility like the Derby Downs arena.

The idea of creating a lease for the maintenance and operation of the Derby Downs Arena area, Clubhouse and associated facilities was presented and approved by the Park Board. A dedicated lease holder that is closely involved in equestrian and livestock events could better serve the particular needs of those type of activities. They would have a greater insight into the unique maintenance requirements, amenities needed, and the coordination required to host the highest quality events. That attention to detail would also likely translate into more events looking to use the venue in the future.

Optimally, through a lease agreement, the City could allow for greater operational flexibility while retaining oversight. The City will continue to maintain a reasonable revenue stream while at the same time transferring some the current maintenance load from the parks staff.

FINANCIAL IMPACT:

The proposed 2 year lease with K & H Rodeo Co. LLC. is designed to transfer the maintenance and operation of the area described in Exhibit A. This arrangement thereby reduces the City's operational costs for the site.

Additionally, the City will receive revenue from any alcohol sales at the venue during special events operated by the Lessee.

In lieu of any direct payment requirement, the City acknowledges the benefits that will accrue as a result of K&H's investments of time and money into the facility as described in the existing Derby Downs Facility Update Agreement. (attached)

SUGGESTED MOTION:

Authorization for the City Manager to execute the Derby Downs Lease agreement with K&H Rodeo Co. LLC.

ATTACHMENT(S):

[Derby Downs Lease Agreement](#)

[City of Watertown - K&H Rodeo Company LLC - Derby Downs Updates Agreement](#)

LEASE AGREEMENT

DERBY DOWNS FACILITY

This Lease Agreement (hereinafter "Lease") is made and entered into this ____ day of January, 2024, by and between the City of Watertown (hereinafter "LESSOR"), and K&H Rodeo Company LLC (hereinafter "LESSEE"), to define the rights and obligations of the parties over and upon Derby Downs Fairgrounds Facility located in Watertown, South Dakota where LESSEE engages in voluntary recreational activity, including the operation of Watertown Rodeo, and is subject to the following terms and conditions:

1. **Leased Premises.**

LESSOR hereby leases to LESSEE real property, commonly known as Derby Downs Fairgrounds Facility in the City of Watertown, County of Codington, State of South Dakota, and legally described as follows:

North Half (N1/2) of the Southwest Quarter (SW1/4) Less Outlot 3 and Less that Portion of Watertown Airport 1st Subdivision Lying within City Lands 26-117-53.

which property is more fully depicted on Exhibit A, attached hereto, and incorporated by reference, and consisting of rodeo fairgrounds and associated concession areas.

2. **Term.**

The term of this Lease shall be for one (2) years from the date of execution with the first option to renew at the conclusion of the initial term.

3. **Rent.**

LESSEE shall pay LESSOR (\$__0__) for the lease term, plus other good and valuable consideration more fully set forth herein.

4. **Rights and Obligations of LESSOR.**

- A. LESSOR warrants that it has authority to lease said premises to LESSEE for the purposes described herein.
- B. LESSOR warrants that LESSEE shall, during the term of this Lease, have the right of quiet enjoyment in the leased premises, except as provided for herein.
- C. It is expressly agreed and understood by the parties that during the term of this Lease, LESSOR shall have the right of access over and upon the leased premises at any time for any purpose.
- D. LESSOR agrees that LESSEE shall be eligible to make application for issuance, or renewal, of a malt beverage license over and upon the above-described leased premises, with the express acknowledgment that the approval of such license shall rest solely in the discretion of the Watertown City Council.

- G. LESSEE is responsible for payment of all utilities during the Lease Term in addition and separate from Rent and shall transfer utilities into the name of LESSEE during the Lease Term.
- H. Any construction, e.g., structural, signage, landscaping, lighting, etc., will comply with applicable construction and building codes. Written specifications for any and all construction or improvements must be submitted to the Parks and Recreation Director and must receive written approval prior to proceeding.
- I. LESSEE agrees that, at all dates and times when it is permitted to engage in malt beverage sales from the concession building, it will exercise its best efforts to prevent participating members of any event from bringing onto the leased premises any alcoholic beverage which was not purchased from LESSEE's concession operation.

6. Indemnification.

LESSEE agrees to indemnify and hold LESSOR harmless, for any injury, whether to person or property, arising out of, or occurring as a result of, any activities conducted on the leased premises, whether to LESSEE personally, or any employee, agent, invitee, guest, heir of assign of LESSEE, during the term of this Lease. It is specifically agreed and understood that this express provision cannot be amended or extinguished, in any manner, during the term of this Lease or any renewal, and is binding on the LESSEE's heirs and assigns.

7. Right of Termination.

Except as otherwise provided herein, this Lease may be immediately terminated, without any penalty or further liability, upon written notice by either party. LESSEE expressly acknowledges that LESSOR shall have the immediate right to revoke this Lease and all rights and privileges conveyed hereunder in the event any employee or agent of LESSEE is adjudged, pleads, or in any other manner is found guilty of any violation of SDCL Title 35, and all acts amendatory thereto, relating to the sale or dispensation of alcoholic beverages, which violation occurs anywhere upon the leased premises. LESSEE further agrees that upon termination of this Lease, LESSOR shall be immediately permitted to revoke any existing malt beverage license. LESSEE further agrees, upon termination, to promptly remove any and all equipment from the leased premises and will exercise its best efforts, prior to surrender of the leased premises, to restore the leased premises to the condition then existing at the time LESSEE took possession thereof, less any authorized improvements made thereon.

8. Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, or sent via certified mail, return receipt requested, to the following addresses:

If to LESSOR:

City of Watertown
Attn: Director of Parks & Recreation
23 2nd Street N.E.

If to LESSEE:

K & H Rodeo LLC
Attn: Mac Blais
44506 156th Street

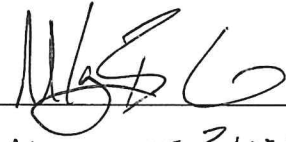
- A. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.
- B. This Lease shall be construed in accordance with the laws of the State of South Dakota.
- C. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.
- D. This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

Dated this 1 day of JANUARY, 2024 at Watertown, South Dakota.

LESSOR:

Amanda Mack
City Manager

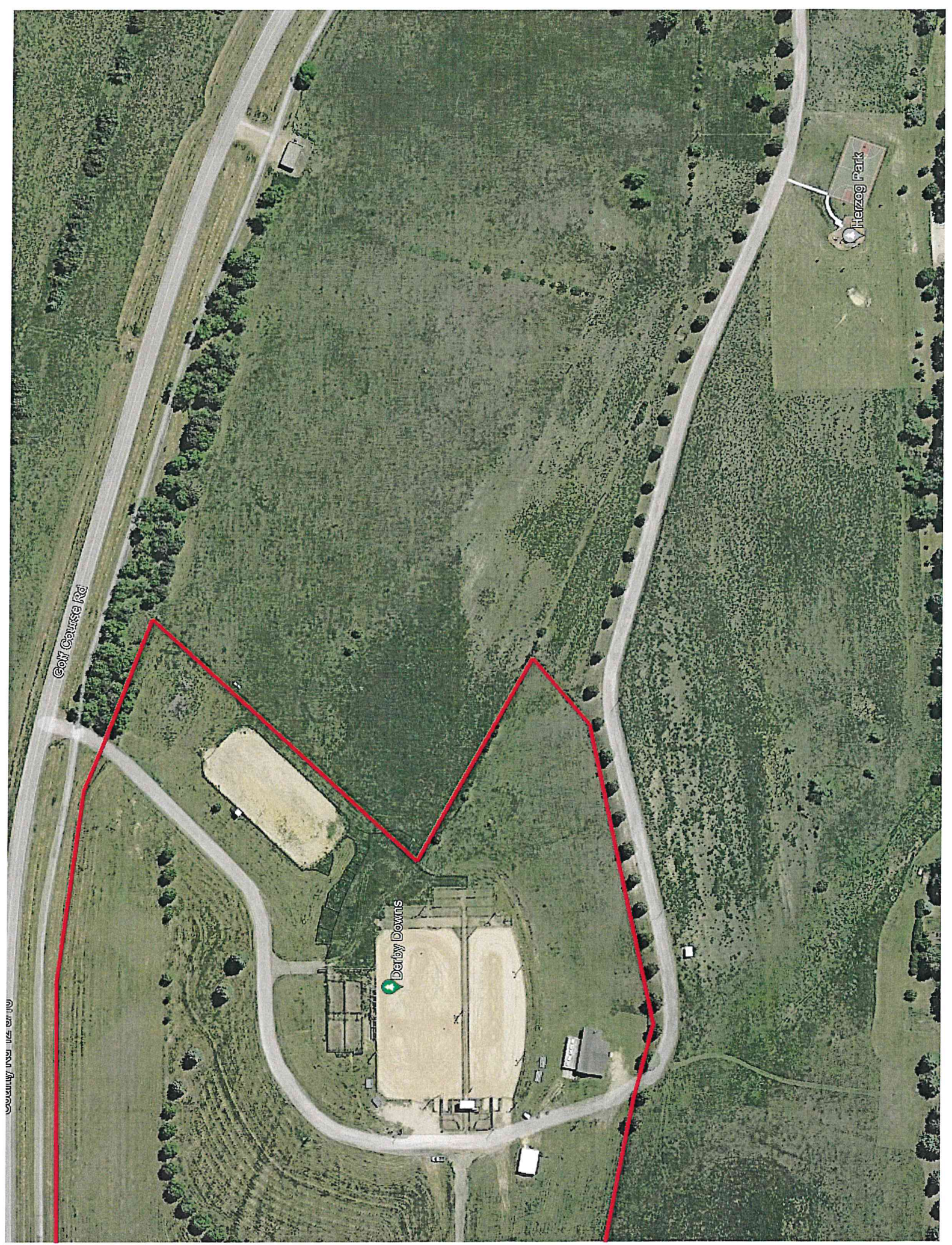
LESSEE:


NAKENZIE BLAIS
OWNER

ATTEST:

Kristen Bobzien
Finance Officer

(SEAL)



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DERBY DOWNS FACILITY UPDATES AGREEMENT
K&H RODEO COMPANY LLC – CITY OF WATERTOWN

THIS AGREEMENT (“Agreement”) is made and entered into by and between K&H Rodeo Company LLC (“K&H”), and the City of Watertown (“City”), collectively the “Parties.”

RECITALS

1. K&H approached the City Parks, Recreation, and Forestry Department requesting to voluntarily, and at its own expense, make certain updates, improvements, and changes to the City’s Derby Downs rodeo grounds, building, and rodeo arena (the “Facility”). K&H’s plans (the “Facility Updates”) are set forth and illustrated in Exhibit A, attached to this Agreement and incorporated by reference. K&H is interested in pursuing the Facility Updates to make the facility more suitable for professional rodeo events.
2. At its meeting on April 26, 2022, the Parks, Recreation, and Forestry Board (“Park Board”) approved the Facility Updates contingent upon K&H entering into an agreement with the City assuring that the City would not be responsible for any costs or other liabilities arising therefrom.
3. The Parties each desire to make this Agreement to fulfill the Park Board’s above-referenced contingency and to clarify in writing their respective rights and responsibilities.

AGREEMENT

In consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. **Approval.** The City approves and authorizes the Facility Updates as presented in Exhibit A, and grants K&H, and its officers, members, agents and contractors, the right of liberal access, with any necessary equipment, to the Facility, for the purpose of carrying out the Facility Updates, at any time so long as such activity does not interfere with other authorized users of the facility.
2. **Term.** The initial term of this Agreement is five (5) years, commencing on June 1, 2022. K&H shall be permitted to request additional one (1) year extensions, up to a maximum of five (5) additional years beyond the initial term. City shall reserve the right to deny any requested additional one (1) year term without cause.
3. **City Benefit.** In lieu of any direct payment requirement, City acknowledges the benefits that will accrue as a result of K&H’s investments of time and money into the Facility.
4. **Obligations of K & H.**
 - A. K&H shall diligently pursue the Facility Updates and maintain regular communication with the City regarding its activities at the Facility. Prior to commencing any improvements to equipment, fixtures, or structures at the Facility, K&H shall provide sufficiently detailed plans (the level of detail required will depend on the nature of the improvements) to the City and, if the plans

are acceptable, the City shall agree to them in writing. Depending on the extent of any given improvement or series of improvements, the City reserves the right to require additional financial or insurance assurances from K&H. Additionally, K&H acknowledges that certain improvements may be subject to public bidding or public property disposal processes.

B. K&H shall not seek payment from the City for any portion of the Facility Updates unless otherwise agreed to by the City outside of this Agreement.

C. K&H shall observe, obey, and comply with all customary and lawful maintenance, weed control, and construction practices, as applicable, and to obtain any and all necessary governmental permits (e.g., building permits, permits related to the use of certain chemicals or fertilizers, etc.) at its sole expense prior to undertaking activity at the Facility that requires such permitting.

D. K&H shall not make any change to the natural grading of the land, or cut down trees growing upon the land, nor shall K & H permit any other person to do so, without written consent of the City.

6. **Not a Lease.** This Agreement is not, in any way, to be construed as a lease. The City, and its employees, contractors, and agents, are not restrained from accessing the Facility in any way. This agreement does not provide K&H the ability to make decision regarding uses or users of the Facility. The City remains the sole authorizing entity of Facility uses and users pursuant to the City's customary facility rental process.

7. **Indemnification.** K&H agrees to indemnify and hold City harmless, for any injury, claim, damages, or other liability, whether to person or property, arising out of, or occurring as a result of, any activities conducted at the Facility, whether to any member, officer, employee, agent, heir, or assign of K&H. It is specifically agreed and understood that this express provision cannot be amended, in any manner, during the term of this Agreement, survives the term of this Agreement, and is binding on the heirs, successors, and assigns of K & H's officers, members, employees, or agents.

8. **Right of Termination.** Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability, upon written notice by City, without payment to K&H. Unless otherwise agreed to by the Parties, K&H hereby agrees that upon termination of this Agreement, it will not remove, damage, or rearrange any equipment, materials, or fixtures that were added to or placed at the Facility in furtherance of the Facility Updates.

9. **Abandonment and Clean Up Expenses.** K&H shall reimburse the City for any and all expenses incurred by the City (including the value of employee time) related to the following:

A. If K&H abandons the Facility Updates prior to completion, and any portion of the Facility is left in an unfinished condition requiring City expenses to complete.

B. If, upon expiration or termination of the Agreement, K&H leaves the Facility in a condition requiring the City to incur inordinate expenses directly caused by or related to the Facility Updates, whether complete or incomplete.

8. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, or sent via certified mail, return receipt requested, to the following addresses:

If to City: City of Watertown
23 2nd Street N.E. | P.O. Box 910
Watertown, SD 57201

If to K&H: MacKenzie Blais
44506 156th St
Florence, SD 57235

9. **Assignment; Successors and Assigns.** This Agreement shall not be assigned by K&H without the express written consent of the City. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and permitted assigns.

10. **Miscellaneous.**

A. This Agreement constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations, and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both Parties.

B. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

C. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

DATED this ____ day of _____ 2022.

K&H:

CITY:

ATTEST:

MacKenzie Blais
Member

Amanda Mack
City Manager

Kristen Bobzien
Finance Officer

(SEAL)

EXHIBIT A

Planned Rodeo Grounds Updates

Phase I:

May 18 -June 4

Trench and lay power cable for RV Outlets

Weed control

Drag and haul gravel for entrance

New entrance gates to rodeo grounds

Fix various down fence on grounds (barbed wire, wire mesh, wood posts)

Move all lose panels and mow

- Panels to be moved after each event to "Storage Location"

- This will allow mowing in those areas

Add Power Outlet for Jumbotron

RV Outlets -\$7,500

Remove or move Light Pole -\$1,700

Big Screen Outlet -\$4,500

Arena dirt/sand work -\$10,000

Alley panels and roping boxes -\$12,000

Phase II:

June 13 -July 4

Install secondary power panel for RV Outlets

Install Wi-Fi in clubhouse

Install two TV's in clubhouse (50+" to air event on in VIP area)

Clean/Paint in clubhouse

Remove chain link from clubhouse patio and install new bar height railing

Potentially remove light pole from center alley

Phase III:

July 11-Aug 4

Remove and move return alley

Remove and replace roping box panels/pipe

Re-grade, feather and level arenas with additional sand

Hook up RV Outlets to power panel

Tentative Future Updates

Year Two -Three:

New Crow's Nest

- Include Catwalk

Add round pen on rodeo grounds for public use

Add permanent Horse Stall Area (west of riding arena)

Year Three -Five:

New Clubhouse

Add Lean Too over permanent Horse Stall Area