



City Council

Agenda Item

Subject: Approval of Derby Downs Facility Updates Agreement with Mackenzie Blais
Meeting: City Council - May 16 2022
From: Matt Roby, City Attorney

BACKGROUND INFORMATION:

At its April 26, 2022 meeting, the Park Board authorized Mackenzie Blais to make certain updates and changes to the Derby Downs rodeo grounds, building, and arena. The Park Board approval was contingent upon an agreement with Mackenzie being approved by the City Council that ensures no costs related to the planned work become the City's responsibility.

SUGGESTED MOTION:

I move to approve the Derby Downs Facility Updates Agreement with Mackenzie Blais

STAFF REFERENCE(S):

Matt Roby

ATTACHMENT(S):

[City of Watertown - Mackenzie Blais - Derby Downs Updates Agreement](#)

DERBY DOWNS FACILITY UPDATES AGREEMENT
MACKENZIE BLAIS – CITY OF WATERTOWN

THIS AGREEMENT (“Agreement”) is made and entered into by and between MacKenzie Blais ("Mac"), and the City of Watertown ("City"), collectively the “Parties.”

RECITALS

1. Mac approached the City Parks, Recreation, and Forestry Department requesting to voluntarily, and at his own expense, make certain updates, improvements, and changes to the City’s Derby Downs rodeo grounds, building, and rodeo arena (the “Facility”). Mac’s plans (the “Facility Updates”) are set forth and illustrated in Exhibit A, attached to this Agreement and incorporated by reference. Mac 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 Mac 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 Mac, and his 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. Mac 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 Mac’s investments of time and money into the Facility.
4. **Obligations of Mac.**
 - A. Mac shall diligently pursue the Facility Updates and maintain regular communication

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with Parks, Recreations, and Forestry Department staff regarding his activities at the Facility.

B. Mac 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. Mac 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 his sole expense prior to undertaking activity at the Facility that requires such permitting.

D. Mac shall not make any change to the natural grading of the land, or cut down trees growing upon the land, nor shall Mac 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 Mac 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.** Mac 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 him personally, or any employee, agent, heir, or assign of Mac. 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 Mac and Mac's 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 Mac. Unless otherwise agreed to by the Parties, Mac hereby agrees that upon termination of this Agreement, he 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.** Mac 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 Mac 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, Mac 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.

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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 Mac: MacKenzie Blais

9. **Assignment; Successors and Assigns.** This Agreement shall not be assigned by Mac 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, at Watertown, South Dakota.

Mac:

City:

Attest:

MacKenzie Blais

Amanda Mack
City Manager

Kristen Bobzien
Finance Officer

(SEAL)

Rodeo Grounds Updates

Wednesday, May 11, 2022 11:38 PM

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

Investment if forced to use new arena panels \$45,000

Investment if re-using existing products \$15,000

RV Outlets - \$7,500

Remove or move Light Pole - \$1,700

Big Screen Outlet - \$4,500

Phase II:

June 13 - July 4

Remove Some or all catch pens and replace with arena panels
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

Phase III:

July 11- Aug 4

Remove center light pole
Remove and move return alley
Move Bucking Chutes
Move Roping Boxes
Remove Rough Stock Pens
Setup new Rough Stock Pens
Feather and level arenas with additional sand
Setup stripping chute
Setup loading chute
Move catch pens
Replace north fence where bucking chutes are
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

