

New Track Operat Robert Anderson

A-348-2824

C-381-2280

1987  
5-5-03

Black Hills  
BMX

LEASE AGREEMENT BETWEEN CITY OF RAPID CITY  
AND BLACK HILLS BMX ASSOC.

For and in consideration of the mutual promises and agreements contained herein, the City of Rapid City ("City"), a municipal corporation, agrees to lease to BLACK HILLS, BMX ASSOC. (Lessee), a non-profit corporation of the State of South Dakota, a specified area to operate a BMX TRACK, subject to the following terms and conditions:

1. Consideration. City hereby leases to Lessee the below described premises for the sum of ONE Dollar(s) (\$ 1<sup>00</sup>) per year and other good and valuable consideration, including but not limited to, maintenance of general grounds, construction of incidental improvements, administration, responsibility for mowing of the fields, and responsibility for all electrical bills. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term. The term of this agreement is from Jan. 1, 2003 to Jan. 1, 2012.

3. Premises. The premises leased by the City to the Lessee are described on Exhibit "A" & "B" ~~is~~ attached hereto and incorporated herein by reference.

4. Surrender of Premises. Lessee agrees to surrender the premises, or any part thereof, in the event it is necessary for expansion or utilization of public park facilities, and they further agree to abandon the premises, or any part thereof, in the event the demand is made by the United States government, State of South Dakota, or City of Rapid City. It further agrees to abandon the premises, or any part thereof, whenever ordered to do so by a court of law or whenever the City is ordered to terminate said agreement by an order of any court.

5. Use. Lessee shall have priority but non-exclusive use of the premises during the lease period, subject to the terms of this lease, for the purpose of operating a

Bmx TRACK. Lessee agrees that the City may use the premises when the same is not required for use by Lessee, and such use by the City shall not be inconsistent with the normal usage of said premises.

6. Use by Others. Lessee will not allow other ~~persons or~~ organizations to use the premises under this Lease without the express written consent of the Public Works Director or his/her designee. ~~However, upon the direction of the Public Works Director or his/her designee,~~ Lessee shall allow other persons ~~or organizations~~ to use the premises if the premises are not in bona-fide use by the Lessee. In keeping with the best interests of the community and equitable access to all City recreation facilities, Lessee agrees to negotiate in good faith as to the use of the premises by others. The maintenance costs for such use shall be determined by Lessee and the authorized user; provided, however, that the Public Works Director will determine said costs if the parties are unable to agree.

7. Maintenance. Lessee agrees to maintain said premises under the authority of the Public Works Director or his designee. Lessee agrees to repair or replace any property damaged willfully by Lessee's members or invitees which occurs while the premises are in use by Lessee. Lessee agrees to be responsible for policing the premises and to pick up and make ready for city collection of all trash, debris, and waste material of every nature, including mowing of weeds, resulting from the use of the premises by itself or any spectators in attendance at such premises. Lessee agrees to provide its own trash receptacles for use at the premises. Lessee agrees to be responsible for the preparation of the playing fields prior to all scheduled game days. Lessee also

agrees to place all collected trash, debris, and waste in a designated location for removal by the City of Rapid City.

City, at its own expense, agrees to provide unique or unusual maintenance and routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer and all repairs and surface maintenance of parking lots. City agrees to provide water to the premises for the purpose of watering the playing field grass. City specifically reserves the right to restrict water usage under this agreement if water restrictions are placed on other water users within the City.

8. Mowing. Lessee shall mow the playing fields on a substantially weekly basis during the season. The Superintendent of Parks can mow the fields and charge Lessee at the rate of twenty-five dollars (\$25.00) per hour for each person and machine used, provided that the Superintendent of Parks: (1) determines the need for mowing; (2) gives Lessee three (3) days notice of his intent to do so if Lessee fails to mow; and (3) determines he has the available personnel and equipment. Should the City Parks Department not have the available personnel and equipment, the Superintendent of Parks can arrange for a private contractor to mow at the expense of Lessee.

9. Construction Approval. Construction and other improvements at the leased areas shall be in conformity with the regulatory codes of the City and subject to the approval of the Public Works Director or his designee. Any permanent improvements or fixtures constructed by the Lessee in the leased area shall be considered the property of the City.

10. Expense. City shall assume no expenses as a result of this lease or any of the operations of the Lessee. Lessee agrees to pay its own administration expenses, including but not limited to, employees, lights and electricity, grounds crew, office supplies, equipment, and

secretarial fees. Lessee agrees that the electric utilities will be metered in the name of and billed directly to Lessee and that all expenses incurred by it shall be paid within thirty (30) days of due date.

11. Public Accounting. Lessee agrees to make available to the City upon request a public accounting of its financial transactions. Such accounting shall be in the form of a report of income and expense and balance sheet of its assets and liabilities.

12. Termination. If Lessee shall dissolve or abandon the use of the premises for one season or fail to meet its consideration requirements as set forth in Section 1 of this lease without approval from the City, this lease shall be terminated and Lessee shall have no further rights hereunder. If Lessee changes the character of its operation significantly from that of a non-profit corporation, then it shall have no further rights under this lease.

13. Liability. Lessee agrees that the City shall be held harmless from any and all liability arising from any operation or use under this lease of the described premises by it or its agents or employees or any other person using the premises. Lessee agrees to purchase or provide and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars (\$1,000,000). The City shall be named an additional insured in said policy or policies, and Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

14. Assignment or Subletting. This lease shall not be assigned nor the premises sublet by Lessee except on written consent and approval of the City.

15. Concession, Advertising, and Naming Rights. Lessee shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in the public parks. Lessee also agrees to be responsible for cleaning and maintaining the concession

area. Lessee shall have the right to sell advertising space on the inside of the fences enclosing the playing fields and all revenue derived from concessions and advertising shall belong to Lessee; provided, however, that any permits required shall be obtained and all regulations and City ordinances shall be followed. Lessee shall have no naming rights over the premises unless specifically approved by the Common Council of the City of Rapid City.

16. Parking. Lessee agrees that it will permit no vehicular parking within the leased areas except in those areas as may be designated for parking by the Public Works Director or his designee.

17. City Authority. All matters pertaining to the terms of this lease shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota.

18. Change of Contacts and Officers. Lessee agrees to notify the Director of Public Works and the City Finance Officer of any changes in the officers of Lessee within thirty (30) days after said change. Attached to and incorporated by reference into the terms of this agreement are the names and addresses of the current office holders of Lessee.

19. Non-Discrimination. Lessee shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin, sexual preference, or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by local, state, or federal laws. Lessee further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

20. Relationship Between the Parties. This lease does not create any employee/employer relationship between the City and Lessee, its agents or employees.

21. Integration. The parties agree that this agreement constitutes the entire understanding between them and that there are no other oral or collateral leases or understandings of any kind or character except those contained herein. or attached by amendment.

Dated this 5 day of May, 2003.

CITY OF RAPID CITY

By: Jim Oster  
Mayor

ATTEST:

James F. Preston  
Finance Officer

(SEAL)

(NAME OF LESSEE)

Black Hills BMX

By: Les Sackett  
Its: President

State of South Dakota )

SS.

County of Pennington )

On this the 8 day of May, 2003, before me, the undersigned officer, personally appeared ~~Jerry Munson~~ <sup>Jim Shull</sup> and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jeri Lynn  
Notary Public, South Dakota

My Commission Expires: 9/3/08

(SEAL)

State of South Dakota )

SS.

County of Pennington )

On this the 15<sup>th</sup> day of April, \_\_\_\_\_, before me, the undersigned officer, personally appeared Les Sakreiter, who acknowledged himself to be the President of Black Hills BMY and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of ~~Black Hills~~ Black Hills by himself as President BMY.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Margaret Smedley  
Notary Public, South Dakota

My Commission Expires:

(SEAL) 6/25/2003

Prepared By: CITY ATTORNEY'S OFFICE  
AT 4.19.03

AMENDMENT TO LEASE AGREEMENT BETWEEN  
CITY OF RAPID CITY AND BLACK HILLS BMX

This is an Amendment to the Lease dated \_\_\_\_\_, 2003, by and between the City of Rapid City, a municipal corporation, (City) and Black Hills BMX, (Lessee).

The parties agree that Section 13 of the Lease shall be amended to include the following:

13. Liability. Lessee's liability shall be limited to accidents, injuries, or damages resulting from their negligence.

The parties agree that Section 22 of the Lease shall be added to read as follows:

22. Black Hills BMX Association may construct lighting in compliance with City codes and requirements. The lighting shall be designed and installed to reflect away from the adjacent residential areas and the existing softball fields. Usage of the lighting shall be limited to Thursday evening from 6:00 o'clock p.m. to 10:00 o'clock p.m. during June, July, and August.

Dated this 5 day of May, 2003.

CITY OF RAPID CITY

By: Jim Hester  
Mayor

ATTEST:

James F. Austin  
Finance Officer

(SEAL)

BLACK HILLS BMX

By: Chris Sackett  
Its: President



State of South Dakota )  
SS.  
County of Pennington )

On this the 8 day of May, 2003, before me, the undersigned officer, personally appeared ~~Jerry Munson~~ <sup>Jim Shaw</sup> and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jeri Lynn  
Notary Public, South Dakota

My Commission Expires: 9/3/08

(SEAL)

State of South Dakota )  
SS.  
County of Pennington )

On this the 15<sup>th</sup> day of April, 2003, before me, the undersigned officer, personally appeared Les Sankriter, who acknowledged himself to be the President of Black Hills BMX, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Black Hills BMX by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

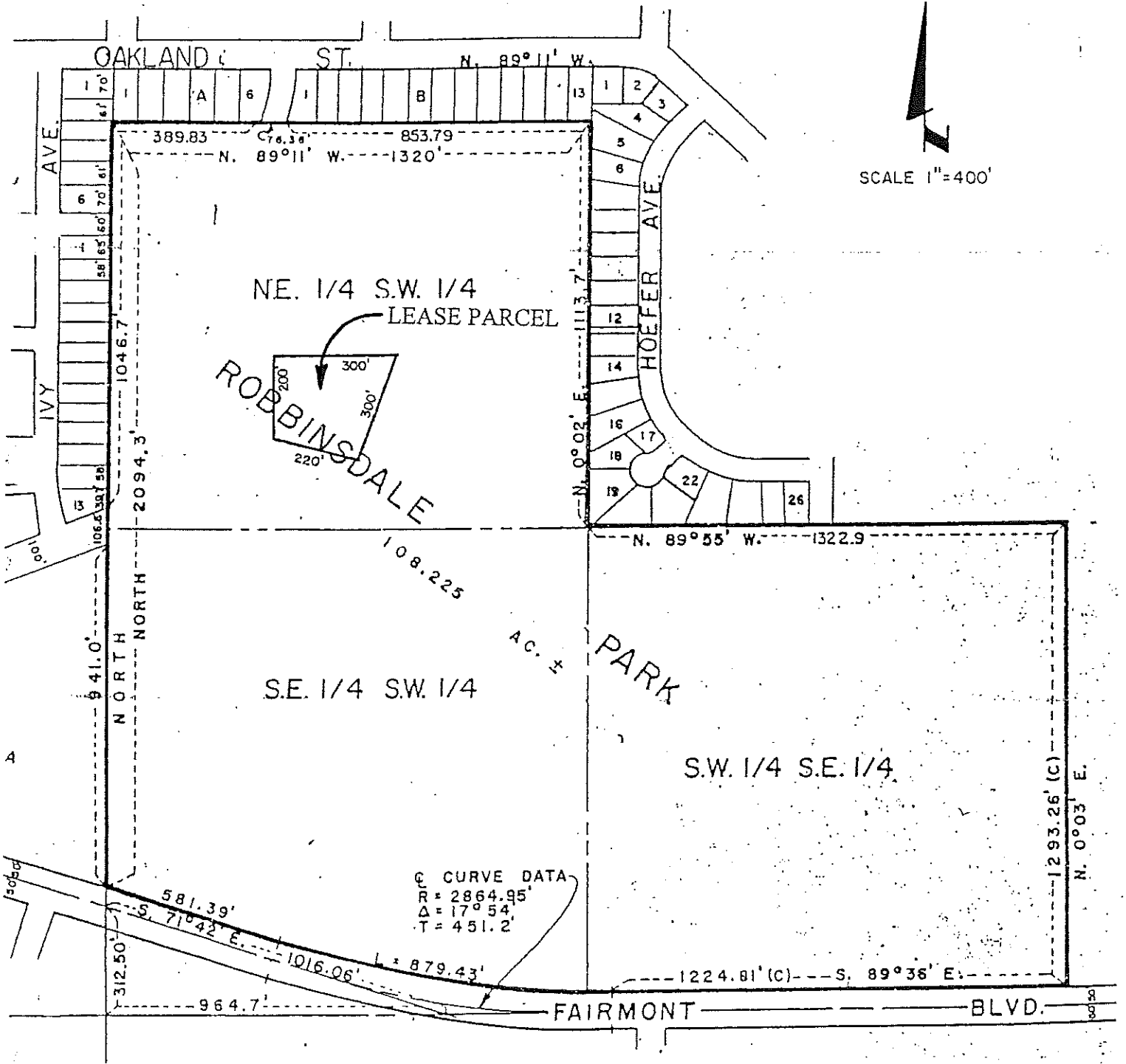
Margaret Paul  
Notary Public, South Dakota

My Commission Expires:

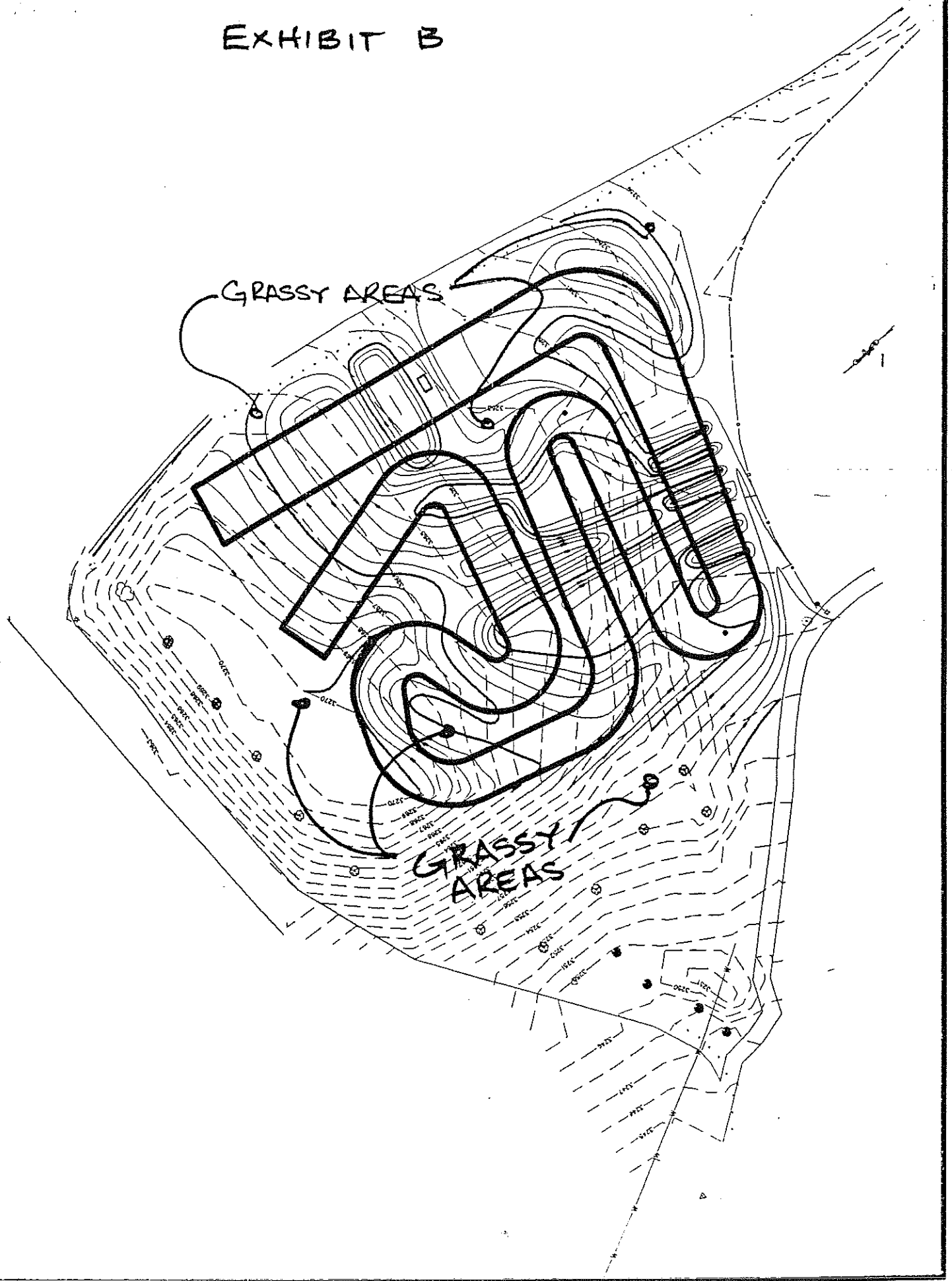
(SEAL) 6/25/2003

Prepared By: CITY ATTORNEY'S OFFICE  
At 4-14-03

EXHIBIT "A"



# EXHIBIT B



PUBLIC WORKS

300 6<sup>th</sup> ST

RAPID CITY, SD 57701

ROD JOHNSON:

MEMBERS OF THE BLACK HILLS BMX

ASSOCIATION INCLUDE THE FOLLOWING

MEMBERS:

LES SACKREITER, PRESIDENT

1701 32<sup>ND</sup> ST

RAPID CITY, SD 57702

605-342-9791

TOM VANVLACK, VICE PRESIDENT

5520 MEADOW LARK DR.

RAPID CITY, SD 57702

605-341-0225

MARILYN SACKREITER, SECRETARY/TREASURER

1701 32<sup>ND</sup> ST

RAPID CITY, SD 57702

605-342-9791

TIM BAUMGARTNER, BOARD OF DIRECTORS

13517 NECK YOKE Rd.

RAPID CITY, SD 57702

605-343-3054

THANKS,  
*Les Sackreiter*

# TRACK OPERATION

## TRACK DIRECTOR:

TONY KLOCK  
4420 DERBY LN  
RAPID CITY, SD 57701  
605-431-2323

## ASSISTANT TRACK DIRECTOR

KEVIN KAUTH  
410 E NEVADA  
RAPID CITY, SD, 57701  
605-721-6327

Dated this 5<sup>th</sup> day of May, 2003.

CITY OF RAPID CITY  
s/ Jerry Munson, Mayor

ATTEST:  
s/ James F. Preston  
Finance Officer  
(SEAL)

36. No. LF043003-10 – Authorize Mayor and Finance Officer to Sign Lease Agreement between City of Rapid City and Rapid City Girls Junior Olympic Amateur Softball Association.
37. No. LF043003-11 – Authorize Mayor and Finance Officer to Sign Lease Agreement between City of Rapid City and Rapid City Girls Junior Olympic Amateur Softball Association.
38. No. LF043003-12 – Authorize Mayor and Finance Officer to Sign Lease Agreement between City of Rapid City and Black Hills BMX Association.
39. No. LF043003-13 – Authorize Mayor and Finance Officer to Sign Lease Agreement between City of Rapid City and Rapid City Church Softball League.
40. No. LF043003-14 – Authorize Mayor and Finance Officer to Sign Lease Agreement between City of Rapid City and Black Hills Farmers Market.
41. No. LF043003-15 – Authorize Mayor and Finance Officer to Sign Authorized Provider Agreement with American Red Cross.
42. No. LF043003-17 – Authorize staff to Advertise for Bids for One (1) New Current Model Year Greens Mower for Municipal Golf Courses.
43. No. LF043003-18 – Approve the Following Abatement: Larry A. Hoback, 2002, \$79.36.
45. No. LF043003-19 – Direct the City Attorney's office to finalize the Infrastructure Development Agreement between the City of Rapid City and the Hendersons and include the option of either a letter of credit or a certificate of deposit securing the loan.
46. No. LF043003-20 – Approve Appointment of Don Dubej as the Electrical Utility Representative and Jim Mullenberg as the Master Electrician Representative to the Rapid City Electrical Board for Two Year Terms.
47. No. LF043003-21 – Approve Appointment of Jeff Medley as Wholesale Business Representative to the Rapid City Plumbing Board for Two Year Terms.
48. No. LF043003-22 – Approve Appointment of James Schamber to the Rapid City Mayor's Committee on Disabilities (Term to Expire December, 2003).
49. Approve funding for EAFB Task Force in the sum of \$56,000 out of the Council Contingency Fund for 2003 and include additional funding for the EAFB Task Force in the budget for 2004 and 2005.

### **Raffle**

- 49A. Request from the **Veterans Coordination Commission** to sell Poppies and Forget-Me-Nots for the purpose of assisting veterans and their families: American Legion Auxiliary Poppies: May 1-May 16, 2003; Disabled American Veterans Forget-Me-Nots: June 14-June 27, 2003; and Veterans for Foreign War Poppies: May 17 thru May 31, 2003

End of Consent Calendar

Motion was made by Kroeger, seconded by Rodriguez and carried to approve No. PW042903-01 – Authorize staff to advertise for bids for W99-845, Dyess Avenue Water Main Extension Project.

The next item discussed by the Council was the bid opening for **West Boulevard Reconstruction Project ST03-1067**. The following companies submitted bids which were opened on May 1, 2003: 1) RCS Construction; 2) Heavy Constructors; 3) Mainline Contracting; 4) Hills Materials Company and 5) Simon Contractors of South Dakota. Staff has