City of Peoria, Arizona
Agreement

Agreement No: **A11-225** Date: **March 21, 2011**

Materials and/or Services: **Facility Use and Family Pass Agreement with AZ Breakers**

Contact: **Lisa Houg**

Location: City of Peoria, Materials Management

Phone: (623) 773-7115

Mailing Address: 9875 N. 85th Avenue, 2nd Floor, Peoria, AZ 85345

OFFER

To the City of Peoria: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City an Agreement that contains all terms, conditions, specifications and amendments in the Agreement issued by the City. Any exception to the terms contained in the Agreement must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with Paragraph 1 of the City of Peoria Standard Terms and Conditions (form COP 202) contained in the Agreement package issued by the City.

Arizona Transaction (Sales) Privilege Tax License Number: _____

For clarification of this offer contact:

Name: Lorenzo Smith

Telephone: 602-703-3270 Email: coachsmith@azbreakers.org

Arizona Breakers Youth Sports of Surprise, dba ABYSS, Assn.
Company Name

17893 W. Carmen Drive
Address

Surprise, AZ 85388
City State Zip Code

Authorized Signature for Offer

LORENZO P. SMITH
Printed Name

Founder / President
Title

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is accepted by the City, subject to approval of each written exception that your Agreement contained. The contract consists of the following documents: 1.) Agreement issued by the City; 2.) Your offer in Response to the City's Agreement; 3.) This written acceptance and contract award.

As the contractor, you are now legally bound to sell the materials and/or services listed by the attached award notice, based on the Agreement, including all terms, conditions, specifications, amendments and your offer as now accepted by the City. The Contractor shall not commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed Purchase Order or Notice to Proceed.

Attested by:
Wanda Nelson
Wanda Nelson, City Clerk

City of Peoria, Arizona. Effective Date: 5/1/2011

Approved as to form:
Ellen Van Riper, Assistant City Attorney
Stephen M. Kemp, City Attorney

CC: _____

Contract Number: ACON 18811

Contract Awarded Date April 7, 2011

Official File: _____

J.P. de la Montaigne, Community Services Director

Herman Koebergen, Materials Manager

City Seal

Copyright 2003 City of Peoria, Arizona
COP 203AGR (06/21/10)CW

A CON 18811

STANDARD TERMS AND CONDITIONS

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page (COP Form 203), the Vendor certifies:

   a. The submission of the offer did not involve collusion or other anti-competitive practices.

   b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

   c. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.

3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

   Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

   Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

   A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

   Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

   The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that is has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.

5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.

6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment (COP Form 217) signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.

8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.

9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contact. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.

12. **NO DELEGATION OR ASSIGNMENT:** Contractor shall not delegate any duty under this Contract, and no right or interest in this Contract shall be assigned by Contractor to any successor entity or third party, including but not limited to an affiliated successor or purchaser of Contractor or its assets, without prior written permission of the City. The City, at its option, may cancel this Contract in the event Contractor undertakes a delegation or assignment without first obtaining the City's written approval. Contractor agrees and acknowledges that it would not be unreasonable for the City to decline to approve a delegation or assignment that results in a material change to the services provided under this Contract or an increased cost to the City.

13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.

14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

    The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

17. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

    Force majeure shall not include the following occurrences:

    a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

    b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

    Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

19. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

20. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all:

    a. Waive the non-conformance.

    b. Stop the work immediately.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

c. Bring material into compliance.

This shall be accomplished by a written determination for the City.

21. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

22. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials and/or service shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.

23. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.

24. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

25. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.

26. **LICENSES:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

27. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

28. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

29. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

30. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 3 above.

31. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.

32. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award (COP Form 203).

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

33. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.

34. **DISCLAIMER:** The City of Peoria, Arizona provides current and complete solicitation information for registered Plan Holders only. Updates, amendments and related information regarding the solicitation contained herein will be delivered only to registered Plan Holders. The City assumes no liability or duty to so update or send any update to persons who are not Plan Holders. Any person who acquires these documents from any source other than the City website or directly from the Materials Management Division, has no assurance that the solicitation is valid. No person may amend this document, nor may any person publish it without this disclaimer.

35. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.

36. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 30 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 3 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.

37. **PROHIBITED LOBBYING ACTIVITIES:** The Offeror, his/her agent or representative shall not contact, orally or in any written form any City elected official or any City employee other than the Materials Management Division, the procuring department, City Manager, Deputy City Manager or City Attorney's office (for legal issues only) regarding the contents of this solicitation or the solicitation process commencing from receipt of a copy of this request for proposals and ending upon submission of a staff report for placement on a City Council agenda. The Materials Manager shall disqualify an Offeror's proposal for violation of this provision. This provision shall not prohibit an Offeror from petitioning an elected official after submission of a staff report for placement on a City Council agenda or engaging in any other protected first amendment activity after submission of a staff report for placement on a City Council agenda.

38. **PROHIBITED POLITICAL CONTRIBUTIONS:** Consultant during the term of this Agreement shall not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any city elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision

SPECIAL TERMS AND CONDITIONS

Agreement Number: **A11-225**

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for Facility Use and Family Pass agreement.

2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for sixty (60) days after the opening time and date.

4. **Eligible Agencies:** Any contract resulting from this Solicitation shall be for the exclusive use of the City of Peoria.

5. **Contract Type:** Fixed Price

6. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed in the State of Arizona with policies and forms satisfactory to the City.

   All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City, constitute a material breach of this Contract.

   The Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

   Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the City.

   The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

   The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

   The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

   The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

7. **Required Insurance Coverage:**

   a. Commercial General Liability

   Contractor shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $2,000,000 Products/Completed Operations Aggregate and a $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011207 or any replacements thereof. The coverage shall not exclude X, C, U.

   Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

   The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20370704, and shall include coverage for Contractor's operations and products and completed operations.

   Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than $1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

   b. Automobile Liability

   Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00010306, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $1,000,000 per accident limits for bodily injury and property damage shall apply.

   c. Workers' Compensation

   The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit.

   In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

8. **Certificates of Insurance:** Ten (10) days prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

In the event any insurance policy(ies) required by this contract is(are) written on a Aclaims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. A $25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

9. **Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

10. **Independent Contractor:**

a. General

i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Peoria.

ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

b. Liability

i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.

ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

c. Other Benefits

The Contractor is an independent contractor, therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

Materials Management Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

11. **Licenses:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

12. **Safety Standards:** All items and/or services supplied on this contract shall comply with the current applicable Occupations Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

13. **Affirmative Action:** It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability. The City of Peoria encourages diverse suppliers to respond to solicitations for products or services.

	SPECIAL PROVISIONS	Materials Management Procurement 9875 N. 85th Ave., 2nd Floor Peoria, Arizona 85345-6560 Phone: (623) 773-7115 Fax: (623) 773-7118
	Agreement Number: **A11-225**	

Purpose:
To enter into an agreement with Arizona Breakers Youth Sports that will guarantee their basketball club practice space and increase revenue to Rio Vista Recreation Center.

The contract would be for 1 year (renewable) beginning on May 1, 2011 and would give the following:

Basketball court no. 2 for two days per week (Mondays & Wednesdays) from 8:00p.m. – 10:00 p.m. except on holidays or unforeseen circumstances where the facility would be closed.

AZ Breaker Responsibilities:

- Collect funds from player families and write a check made out to the City of Peoria for $55.00 per player by the 28th of each month. Submit list of families with each check. This will allow time for each monthly pass to be updated and effective on the 1st of the following month. The pass will be for each player's family members in the same household, maximum of 6 people.

- This is being done as a package deal and must be convenient and workable to both parties. If player families pay late, they may forfeit time on their pass as all passes will expire at the same time every month.

- The club and family members will follow Rio Vista Recreation Center's Policies and Procedures.

- Any items left in the gymnasium from players or family members will need to be picked up prior to exiting the facility

- Players/family members not current with their pass, will not be allowed entry into the facility. At that point, a coach or representative will have to either make payment or the player will be turned away. Funds will only be accepted from the club in the amount determined by the contract.

- Initially all players and family members will need to complete a pass holder application , have finger print and photo taken prior to using the pass. The finger print is the form of entry. This will be true of new players coming into the club at a later time.

- If issues arise with any player or his family member, facility staff will address directly with him/her. However, if an issue is not resolved after that, facility staff will discuss with Arizona Breakers. As with any pass holder, Arizona Breakers accepts that failure to abide by policies may result in suspension of a pass.

- Provide Certificate of Insurance as outlined in the Special Terms and Conditions.

Materials Management
Procurement
9875 N. 85th Ave., 2nd Floor
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

RVRC Responsibilities:

- Provide practice time in court 2 according to the contract.
- Check players and family members in as is currently done with all Rio Vista pass holders.
- Alert families when a pass has expired.
- Inform club when operating hours may impact the schedule due to a holiday or unforeseen circumstance.

Cancellation of the contract:

If for any reason, the contract needs to be cancelled, 60 days written notice is required by either party.

CONTRACT AMENDMENT

Solicitation No.	A11-225	Page 1 of 1
Description:	Facility Use and Family Pass Agreement for Rio Vista Recreation Center	
Amendment No.	One (1)	Date: August 1, 2012

Materials Management Procurement
9875 N. 85th Ave., 2nd Fl.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Buyer: Lisa Houg, CPPB

The contract is being renewed for an additional one (1) year period. The new contract term is: 5/1/2012 – 4/30/2013.

All other terms remain the same.

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

Signature	Date	Typed Name and Title	Company Name
	8/20/12	Lorenzo Smith - President	Arizona Breakers Youth Sports of Surprise, dba ABYSS, Assn.

Address	City	State	Zip Code
9643 W. Diana Ave	Peoria	AZ	85345

Attested By:

for City Clerk

CC Number

ACON18811A
Contract Number

Director: Community Services Director

Department Rep: Jackie Stanley, Rio Vista Manager

Approved as to Form: Stephen M. Kemp, City Attorney

The above referenced Contract Amendment is hereby Executed

Sept. 10 2012, at Peoria, Arizona

Dan Zenko, Materials Management Supervisor

City Seal
Copyright 2003 City of Peoria, Arizona
(Rev 07/05/11)

Official File

A CON 18811A