



City of Peoria, Arizona Agreement



Agreement No: **A10-093** Date: **October 14, 2009**
 Materials and/or Services: **Facility Use Agreement with Adio Footwear** Contact: **Teresa Andersen**
 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: Jack Schwilke

Telephone: 760-494-2612 Fax: _____

ADIO FOOTWEAR
 Company Name

[Signature]
 Authorized Signature for Offer

2320 CONSTEAN CT
 Address

JACK SCHWILKE
 Printed Name

VISTA CA 92081
 City State Zip Code

NATIONAL SALES MGR
 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:
Mary Jo Kief
 Mary Jo Kief, City Clerk

City of Peoria, Arizona. Effective Date: _____

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

Contract Number:
ACON 58709

Contract Awarded Date October 28, 2009

Official File: _____

[Signature], 10-15-09
 J.P. de la Montagne, Community Services Director
[Signature]
 Herman Koebergen, Materials Manager





STANDARD TERMS AND CONDITIONS

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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 11456.
 - 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



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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 it 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.



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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 contract. 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.



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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.



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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).



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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.



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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 agreement for Adio Z Phx Demo.
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.



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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.



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In the event any insurance policy(ies) required by this contract is(are) written on a "Claims 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.



SPECIAL TERMS AND CONDITIONS

Agreement Number: A10-093

**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

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**CITY OF PEORIA
RIO VISTA SKATEPARK
AGREEMENT**

THIS AGREEMENT between the CITY OF PEORIA (hereinafter "City") and Adio Footwear, hereinafter referred to as "Licensee". In consideration of the mutual promises set forth below, the parties agree as follows:

A. **EVENT:** The Licensee will conduct one event as follows:

a. **Event Details:**

Event Title: Adio Z Phx Demo
Event Date: Saturday October 24th, 2009
Event Location: Rio Vista Skate Park, Peoria Arizona
8866 W. Thunderbird Rd
Peoria, AZ 85381
Event Time: 4:00PM-7:00 PM

1. Term: The term of this agreement between the City and the Licensee will be for one use period, as listed above as Event.
2. City Contact: Upon Licensee's arrival at the Facility, Licensee shall immediately notify Facility Management. Licensee shall present a set up and breakdown schedule no later than 2 weeks prior to the event.
3. Move-In and Move-Out: Rio Vista Park Management shall provide Licensee with an adequate load in and set-up period. Removal of all equipment, property and personnel of Licensee from the Facility shall be completed within 24 hours upon completion of the event. The City shall exercise its best efforts to accommodate Licensee's requests in regards to Move in and Move out.
4. Failure to Vacate Premises: Any equipment or property of Licensee remaining at the Facility after the move out terms set-forth above shall be removed and disposed of by City and shall be deemed abandoned. Licensee shall pay City \$1,000 for this removal in addition to any other payments due under this Agreement.

B. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Licensee's Federal Employer Identification Number is: _____.

C. **FACILITY:** City agrees to furnish the following facility for the Adio Z Phx Demo: Rio Vista Skatepark ("Facility"), including surrounding areas except for those areas reserved for City's use.



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The Licensee shall pay the City in the form of a \$250 in-kind product sponsorship to the Teen Team Recreation Program to be delivered on or before Oct 24, 2009. The Facility shall be supervised by the Teen Supervisor or designee and Licensee shall comply with all Facility rules and regulations concerning the staging of the event. The Facility shall at all times be under the control of City and City reserves the right to permit Facility employees to enter the premises at any time. The Licensee shall work in conjunction with the Facility Staff. Licensee shall take the Facility as he finds it other than those areas manifested, ticketed and controlled as spectator areas.

- D. Parking: Parking for the public shall be permitted in those areas designated as Public Parking Areas. Parking for Licensee and its employees and contractors shall be determined by the City.
- E. Ticketing:
1. Prices and Seating: There will be no admission charge to attend the event. Event will be General Admission Seating.
- F. Concessions: Licensee understands that all food and beverage will be the responsibility of the City. The City will retain 100% of the revenue from the sales of food and beverage
- G. Parking: There will be no charge for parking.
- H. Program/t-shirt/novelty sales: The sale of souvenir programs, T-shirts and other promotional items is limited to designated areas only. The exact location of such sales is to be agreed upon by the City prior to sale. Licensee shall retain 100% of all revenues from such sales.
- I. Sponsorships: Licensee may sell sponsorships related to the Event. Licensee will retain 100% of said revenue. The City may also obtain a local shop sponsor for the event. City will retain 100% of said revenue.
- J. Contest entry fees will be free.
- K. LICENSEE'S OBLIGATIONS:
1. Services and Out-of-Pocket Expenses: Licensee shall cover the full costs of the event, including but not limited to the following services; the estimated amounts of these being:
 - a. Cleanup after the event.
 - b. Security including gate, spectator area, skate area, etc.
 - c. Damages
 - d. Entrance Barricades as needed
 - e. Bleachers as needed
 - f. Event competitors



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2. Additional Obligations and Responsibilities:

a. Within twenty-four (24) hours after the Event, the Licensee shall take down and remove forthwith all signs, advertisements, banners, lithographs, stickers, pull ties, posters or cards of any description objected to by City.

b. Licensee shall not admit to the skatepark a larger number of persons than the seating capacity thereof will accommodate, or which can safely or freely move about in said areas. The seating capacity and configuration shall be approved by the City's Fire Marshal.

c. All workers and staff identified by the City will be issued appropriate credentials to assure easy and undisturbed access to all areas on the Event days.

d. Licensee agrees that Licensee's use of the Facility shall be limited to the uses and purposes specifically set forth herein and for no other uses or purposes. Licensee agrees to enter the Facility for such uses and purposes only on the dates and time specified herein, and to vacate the Facility not later than the date and time specified herein.

e. Licensee agrees to follow City's parks rules and guidelines.

f. Licensee shall supply the City with a list of vendors no later than 30 days before the event. The vendor list will be reviewed by the City and the City reserves the right to refuse any vendor that is deemed inappropriate for the venue.

L. CITY'S OBLIGATIONS:

1. City shall allow the use of the area surrounding the skatepark within the park for booth sales, etc., as deemed necessary by the Licensee.

2. Services and Out-of-Pocket Expenses: The City shall be responsible for the following costs:

- a. Recreation Supervisor
- b. 2 recreation staff members on site during the event
- c. Park Rangers on site during the event
- d. Trash Dumpsters and service

M. CANCELLATION AND DAMAGES/DEPOSIT: As security for the damages that City may incur from a cancellation of the event or from damages to the facility as a result of the event, the Licensee shall, within ten (10) days following the execution of this Agreement, pay to the City a deposit to be held by the City via a cashier's check made payable to the City of Peoria in the amount of \$500 (the "Deposit"). Said Deposit shall be held by the City for fifteen (15) days following the last Performance.



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1. **Cancellation:** In the event that the Licensee, after execution of this Agreement, (a) indicates that the participants scheduled for the Event will fail to appear or compete, (b) fails to appear or compete, City may cancel this Agreement and the Licensee shall be liable for payment of all costs, and expenses incurred by the City related to the event. Licensee's receipt of demand for payment from City for the actual costs and expenses incurred by the City due to cancellation by Licensee shall be paid by a separate check from Licensee within ten (10) days following Licensee's receipt of demand for payment from the City. In the event of non-timely payment of the City's actual costs and expenses and provided that the Deposit have not been depleted as necessary to pay for the damages to the Facility, as noted below, the remaining Deposit shall first be applied to payment of the City's actual costs and expenses.

2. **Damages:** Licensee shall make payment for the cost of any repair or replacement due to any damage caused by the Licensee or its staff to the Facility or its equipment beyond normal wear and tear. Licensee's Deposit shall be held as insurance against damages to or loss arising from injury or damage caused to the Facility. In the event that no cancellation has occurred, said Deposit, or part thereof, shall be returned to Licensee, minus any amount which, in City's sole opinion, is necessary and sufficient to offset the cost of repair for any damage suffered by the Facility during the term (including Move-In and Move-Out periods) of Licensee's use. The Deposit shall be held by City for fifteen (15) days following the end of the Event. If the actual cost of correcting the damages exceeds the amount of available Deposit, the City will bill Licensee for the additional amounts necessary to cure the damages and Licensee shall pay such bill within ten (10) days after receipt of it.

N. **CITY'S RIGHTS:** In addition to those rights enumerated and specified in other sections of this Agreement, the City shall also have the following specified rights:

1. **Ejection of Objectionable Persons:** City reserves the right through its Director and its representatives to eject any person or persons engaging in unruly or disruptive acts or any other objectionable acts which create a disturbance or hinder the Event from the Facility and upon the exercise of said right through City's director, agents, or policemen, Licensee hereby waives any right and all claims for damages against the City of Peoria, its officers, agents, and employees.

2. **Indemnification and Waiver:** City shall not be responsible for any damage or injury that may happen to Licensee or to Licensee's agents, servants, employees or property from any cause whatever prior, during or subsequent to the period covered by this lease; and Licensee hereby expressly releases City from and agrees to indemnify it against any and all such loss, damage or injury.

3. **Recreation Supervisor's Authority:** Licensee acknowledges and understands that City intends to designate, in writing, a Recreation Supervisor as an "Event Manager" during the period of Licensee's use of the Facility. Licensee agrees that the person designated as Event manager shall have total and complete control and authority over Licensee's use of the facility, the Event manager shall be entitled to stop any of Licensee's operations which the Event manager may deem, at his/her sole discretion, to be



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detrimental or potentially detrimental to the condition of the Facility, surrounding areas or any part thereof, which was not agreed upon by the Licensee, City, and Field Manager at the pre-event meeting.

2. No Expenses Unless Approved: City shall have no expenses or charges not expressly authorized in writing by City in this Agreement.

3. Items not Provided for are Subject to City's Discretion: The parties hereto agree that any matters not herein expressly provided for shall be resolved through an agreement established between the City and the Licensee.

O. LICENSEE'S WARRANTY: Licensee warrants that it has full and current legal authority to act and contract on behalf of the Competition Participants. A copy of the contract between Participants and Licensee shall be provided to City upon City's request.

P. SECURITY REQUIREMENTS: The determination for appropriate security levels will be agreed upon by City at least fifteen (15) days in advance of the Event. Licensee agrees to have on hand at all times, at its own expense, such security force as is necessary to maintain order and to protect persons and property. In the event that City and Licensee agree upon additional security personnel requirements, Licensee will pick up the cost for the additional security, within reason.

Q. COPYRIGHT: Licensee warrants that all copyrighted material to be displayed has been duly licensed or authorized by the copyright owners or their representatives. Licensee further agrees to indemnify and hold harmless and defend the City, its officers, representatives, agents, and employees from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the display of and under this Agreement.

R. TECHNICAL SPECIFICATIONS: All reasonable requests for technical services provided by the City must be delivered in writing to the City no later than 30 days prior to the Event. Failure to provide the notice set forth in this section may result in the non-availability of equipment and the possibility of cancellation and liability as set forth in this agreement.

S. LICENSEE EQUIPMENT: Unless provided otherwise in this Agreement, Licensee agrees to provide at Licensee's sole expense, all necessary equipment, sound system, lighting, and transportation associated with the Event. City reserves the right to inspect and approve any equipment provided by the Licensee. City assumes no responsibility for any property placed in the Facility by the Licensee. Any equipment or property of the Licensee remaining on the premises of the Facility or City after the expiration of this Agreement shall be deemed abandoned by the Licensee and may be disposed of by the City.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/15/2009

PRODUCER
Marsh USA Inc.
701 Market Street, Suite 1100
St. Louis, MO 63101-1830
Attn: stlouis.certrequest@marsh.com f - 212-948-0811

THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

ALLTR -JC-GAWP-09-10 Vendor gl

INSURERS AFFORDING COVERAGE NAIC #

INSURED
Marmot Mountain, LLC
2381 Executive Center Drive
Boca Raton, FL 33431

INSURER A: Sentry Insurance A Mutual Co 24988
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

12

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENERAL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	90-04186-11	09/15/2009	09/15/2010	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES(Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ ---
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE Y / N OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
 Re: Adio Footwear-October 24, 2009.
 Certificate Holder is included as an Additional Insured on the General Liability as respects the operations of the Named Insured and only for such terms and limits which are the lesser of the policies hereon or the written requirements between the Named Insured and Certificate Holder and only if required by written contract.

CERTIFICATE HOLDER CHI-002688109-02

CANCELLATION

City Peoria
8401 W. Monroe Street
Peoria, AZ 85345

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE of Marsh USA Inc. *Mary Radaszewski*
 Mary Radaszewski