



NOTICE OF SOLICITATION

Serial 171237-ITN

INVITATION TO NEGOTIATE: PROMOTE, MANAGE, OPERATE, MAINTAIN AND IMPROVE THE EXISTING SPORTS COMPLEX, OR PROVIDE AN ALTERNATE RECREATIONAL FACILITY, AT PARADISE VALLEY URBAN PARK

Maricopa County is accepting proposals from Respondents who are interested in partnering with Maricopa County, acting through its Parks and Recreation Department ("MCPRD"), to promote, manage, operate, maintain and improve the existing sports complex, or provide an alternate recreation facility, at Paradise Valley Urban Park. This Invitation to Negotiate ("ITN") will define the general requirements for partnering program as well as the proposal procedures, evaluation, award criteria, and other factors pertinent to this procurement.

Notice is hereby given that Maricopa County is conducting this intent to negotiate, electronically through an outside agent, BidSync.com, until 2:00 P.M. Arizona time on **January 16, 2018**; "**Serial #171237-ITN: Promote, Manage, Operate, Maintain and Improve the Existing Sports Complex, or Provide an Alternate Recreational Facility at Paradise Valley Urban Park**", for Maricopa County, on behalf of MCPRD. Proposals will be opened by the CONTRACT ADMINISTRATOR (or designated representative) at an open, public meeting on the above date and time, at Maricopa County Office of Procurement Services, 320 West Lincoln Street, Phoenix, Arizona 85003.

To participate in this ITN, vendors (also referred to as "Respondents" in this Notice) shall register through BidSync.com. To register with BidSync.com, please go to WWW.BIDSYNC.COM and click on the orange 'Register' link. Registration has no cost, and will allow you to access all of the bid information, bid documents, receive bid notifications, and submit a response. **ONLY RESPONSES THAT ARE SUBMITTED THROUGH WWW.BIDSYNC.COM WILL BE CONSIDERED FOR AWARD-NO EXCEPTIONS!** For assistance, please contact BidSync Vendor Support Department via phone or email, during regular business hours: 1-800-990-9339 or agency-support@BidSync.com.

All Proposals must be submitted **electronically** to BidSync.com prior to the bid closing. The proposal will be listed under, and marked "**Serial #171237-ITN: Promote, Manage, Operate, Maintain and Improve the Existing Sports Complex, or Provide an Alternate Recreational Facility at Paradise Valley Urban Park**". All administrative information concerning this ITN can be located at MCPRD's website: WWW.MARICOPACOUNTYPARKS.NET Any Addenda to this ITN will be posted online at: WWW.BIDSYNC.COM.

The Maricopa County Procurement Code (the "Code") governs this procurement and is incorporated by this reference. Any protest concerning this ITN must be filed with the Procurement Officer in accordance with Section MC1-905 of the Code.

DIRECT ALL ADMINISTRATIVE INQUIRIES TO: EMILY MILLER, CONTRACT ADMINISTRATOR, EMAIL: emilymiller@mail.maricopa.gov.

THERE WILL BE A MANDATORY PRE-PROPOSAL CONFERENCE ON December 7, 2017 at 9:00 AM, AT: CASEY AT THE BAT COMPLEX, 3947 E Union Hills Dr, Phoenix, AZ 85050. This will present the only opportunity to discuss the County's program requirements. Failure to attend the Mandatory Pre-Proposal Conference will result in Proposals from non-attendees deemed as non-responsive and will not be considered. Bring a copy of the ITN with you to facilitate the review. Bring a business card to be retained by Maricopa County Parks and Recreation Department. On-site parking is available. Wear comfortable shoes and clothes in event you desire to look at the areas in more detail. **Bring your own water – none will be available.**

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**SERIAL #171237-ITN: PROPOSAL TO PROMOTE, MANAGE, OPERATE, MAINTAIN AND
IMPROVE THE EXISTING SPORTS COMPLEX, OR PROVIDE AN ALTERNATE
RECREATIONAL FACILITY, AT PARADISE VALLEY URBAN PARK**

1. BACKGROUND AND INTENT:

Maricopa County (“County”), on behalf of its Parks & Recreation Department (“MCPRD”), is accepting Proposals from qualified Respondents who are interested in private public partnership opportunities to promote, manage, operate, maintain and improve the existing sports complex (“Primary Proposal”) or to provide an alternative recreational facility (“Alternate Proposal”) (Primary Proposal and Alternate Proposal hereinafter collectively referred to as “Proposal”) to expand the recreational opportunities available to the recreating public at Paradise Valley Urban Park (“Park”) on property owned by the County as part of the MCPRD park system. MCPRD recognizes that effective public-private agreements have the potential for not only mobilizing additional resources for park and recreation programs County-wide, but also promote greater effectiveness of those programs, and hence greater impact in sustaining a healthy park and recreation system that make Maricopa County a great place to live, work, and play. The Paradise Valley Urban Park Master Plan (“Master Plan”) provides for this vision and supports activities that will enable MCPRD to continue to upgrade the existing facility and/or provide alternate facilities.

The existing sports facility is located at 3947 E. Union Hills Drive, Phoenix, Arizona and is commonly known as the Casey at the Bat or Casey’s Sports World (hereinafter referred to as “Complex”). The existing facility is situated on 4.028 acres of developed, and 1.232 acres of undeveloped, land. The area of expansion is estimated at 1.232 acres, for a total of 5.26 acres. An option to remove the existing well maintenance facility (requires fence relocation, storage tank removal and the relocation of an Arizona Public Service (“APS”) electrical service line) would allow for incorporation of an additional 0.295 acres into the Complex. If this option is exercised, it would increase the total site area to 5.55 acres. An aerial map is attached as **Exhibit 2 Scope of Services/Work/Specifications and Map** to this ITN. Casey at the Bat’s current use of the 4.028 acres is authorized via a Use Management Agreement (“UMA”) with Maricopa County. The duration of the current UMA with Casey at the Bat is through July 1, 2018 with option for a 5 year renewal. This solicitation is for Respondents that are interested in the facility upon the termination of the current UMA with Casey at the Bat (July 1, 2018 unless they renew to July 1, 2023). The successful Respondent to this ITN is encouraged to discuss and negotiate the remaining term of the existing UMA directly with the owners of Casey at the Bat. Any proposed assignment of the remaining term of Casey at the Bat’s UMA must be approved by the Maricopa County Board of Supervisors.

It is the intent to use the ITN process described herein to select one (1) or more qualified Respondent to perform the services identified in this ITN and to enhance those recreation opportunities currently available or projected at the Park. The desire of County is that the Complex be operational year-round. Consideration will be given to “for-profit” concessionaires, “non-profit” concessionaires and government entities.

This ITN will define the general requirements and basic services being sought by the County, as well as the Proposal procedures, evaluation and award criteria, and other factors pertinent to this ITN (see **Exhibit 4 – Draft County Contract (“Contract”)**). The Contract is included to illustrate the type of provisions desired by the County. Final terms of the Contract will be determined based on negotiations between the County, MCPRD and the successful Respondent.

Maricopa County is home to one of the largest regional parks systems in the nation with over 120,000 acres of open space parks that include hundreds of miles of trails, campgrounds, nature centers and the Desert Outdoor Environmental Learning Center at Lake Pleasant. Currently, there are 10 regional parks in the system which we’re happy to report were visited by over 2.1 million people in 2016.

The Park is located at Union Hills and Highway 51. The original 340 acre site was originally leased from the Arizona State Land Department in 1963 and then patented to Maricopa County in 1978 as a Public Park and Recreation Area. The patent was amended on April 27, 1984 to include other governmental purposes including community college purposes. In 1985, the County transferred 90 acres of Park land by quit claim deed to the Maricopa County College district for use as the Paradise Valley Community College (constructed in 1987). In

1986 and 1987 respectively, the Paradise Valley Golf Course (approximately 95 acres) and Casey at the Bat (approximately 4 acres) were constructed. In 1987, the City of Phoenix and Maricopa County entered into a management agreement for the City of Phoenix to use approximately 40 acres at Paradise Valley Urban Park for a multi-generational center and related facilities and in 1989, an Intergovernmental Agreement was entered into allowing the City of Phoenix to assume the management and operation of 140 acres of the Park, which included the management of Casey at the Bat. The Park was literally split due to the final Squaw Peak easement which was granted in 1991 for construction of Highway 51. In 2003, the City of Phoenix returned the management of the agreement with Casey at the Bat to Maricopa County, as well as approximately 78 acres of land for the construction of a new Maricopa County Northeast Regional Center courthouse. The 78 acres includes the 5 acres of land upon which the Casey at the Bat facility and a County maintenance yard are situated. This 5 acre parcel is part of the overall master plan of the Northeast Regional Center courthouse future expansion; however, it appears that the planned expansion of the court facility can be accommodated without reducing the size of the Complex as shown in the post-2024 timeline (see **Exhibit 3 Maricopa County Courts Master Plan** to this ITN). On October 31, 2012, the County sold 11.646 acres of land adjacent to Paradise Valley Golf Course to Arizona Agribusiness & Equine Center, Inc, for educational purposes. Paradise Valley Golf Course and Casey at the Bat are the two concessions remaining under County management.

Casey at the Bat has been successfully operating since 1987 with its focus on batting cages, softball/baseball training facility and arena sporting events. Current facilities include ten (10) batting cages, Mudville Training Facility (lighted grass infield, pitching mounds, two (2) batting practice tunnels for live pitch, automated soft toss machine, whiffle ball tunnel, soft toss tunnel and tee area), one (1) lighted arena sports field (soccer, dodgeball, football, flag football, kickball, laser tag), a miniature golf course and a concession/restroom building with a liquor license.

2. **SCOPE OF WORK:**

The County desires the successful Respondent to promote, manage, operate, maintain and improve the existing sports complex or provide an alternative recreational concession opportunity. All development must be recreationally oriented and be open to the public (see **Exhibit 2 – Scope of Services/Work/Specifications and Map**). Recreational uses must also be consistent with the land use requirements outlined in the Master Plan. It is important for Respondents to understand the development restrictions in order to submit a proper response. Preliminary questions/known restrictions may be addressed during the Pre-Proposal Conference upon the request of the attendees.

The benefits of developing within the Park and in cooperation with the County include:

- Term of twenty-five years;
- No land acquisition costs;
- No property taxes;
- Prime location;
- Existing Park infrastructure and amenities; and,
- Numerous significant attractions located in close proximity.

3. **SCHEDULE OF EVENTS:**

Invitation to Negotiate Issued: November 17, 2017

Mandatory Pre-Proposal Conference: December 7, 2017, 9:00 AM
(Arizona Time)

Deadline for written questions is four (4) business days after Pre-Proposal Conference. Questions will *not* be responded to prior to the Pre-Proposal Conference or after the four (4) business day deadline has elapsed. All questions and answers shall be posted to WWW.BIDSYNC.COM under the Q&A's tab for the solicitation and must be received by the end of business, 5:00 PM Arizona time.

Deadline for submission of Proposals

January 16, 2018, 2:00 pm
(Arizona Time)

All Proposals must be received electronically through WWW.BIDSYNC.COM before 2:00 P.M., Arizona Time, on the above date and will be opened at the Maricopa County Office of Procurement Services, 320 West Lincoln Street, Phoenix, Arizona 85003.

Proposals Opening Date

January 16, 2018, 2:00 PM

Proposed short list Respondent recommendations:

February 6, 2018

Proposed Respondent presentations: (if required)

February 19-23, 2018

Proposed Presentation of recommended Respondent to
Parks Commission for final selection:

March 20, 2018

Proposed Respondent selection notification:

March 21, 2018

The proposed timeline of completion of the formal Contract or a Pre Development Agreement, culminating with the Maricopa County Board of Supervisors' ("Board") approval is one (1) year from selection as the successful Respondent. A Pre Development Agreement is defined as an agreement among the parties to determine the financial and operational feasibility of the proposed partnership as well as to detail the scope, phasing, timelines, roles and other responsibilities to further refine the final Contract. Failure on the part of the successful Respondent to continue negotiations in good faith, i.e. perceived delays in responding back with comments to a proposed draft Contract, could result in termination of further negotiation. If this were to occur, the successful Respondent would be notified in writing.

All Proposals submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. If a Respondent believes that information in its Proposal should remain confidential, it shall indicate as confidential, the specific information in its offer and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The Records Manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code and the Arizona Public Records Law.

4. **PROPOSAL COMPONENTS:**

To aid in the evaluation, it is desired that all Proposals follow the same general format. The Proposal must have sections tabbed as below: (Responses are limited to Fifteen (15) pages, double sided, 10 point font type).

- A. Table of Contents
- B. Letter of Transmittal
- C. Executive Summary – This section shall contain an outline of the general approach utilized in the Proposal.
- D. Proposal - This section should contain a statement of all of the programs and services proposed, including conclusions and generalized recommendations. Proposals should be all-inclusive, detailing Respondent's best offer. This section will be limited to not exceed 10 pages. The Respondents will be evaluated based on the adequacy of the material submitted in response to the services required as described in Section 2.0 Scope of Work. Provide a definitive statement to respond to the requirements as stated in this ITN. The proposal must describe in detail the procedures and methods that will be used to provide the services requested. Respondents must demonstrate understanding of the project and tasks to be performed, project approach and schedule.
 - 1) Please provide general background information on the Respondent's firm. Be sure to include such information as years in business; type of services performed; size (personal and financial investment); location of business; identification of businesses similar to the one proposed; and

- other pertinent information that would be of interest to the Proposal Evaluation Committee; and
- 2) Include a detailed narrative summary of one (1) to three (3) other successful public projects of similar scope; and/or up to three (3) other successful private projects of similar scope; and
 - 3) List three (3) governmental agencies or private firms with whom you have conducted business transactions during the past three (3) years. At least two (2) of the references named are to have knowledge of your debt payment history. References to be listed should be those in which you have conducted similar business as the proposed project (See **Attachment B – References**); and
 - 4) Respondent shall include a statement of Respondent’s experience in providing the services, or goods for which submitting a Proposal. Include Respondent’s philosophy and a 1-2 page summary and operational plan addressing how the Respondent plans to manage and operate the Complex or alternate facility to increase its use, maintain and improve the facility, and provide for a positive experience for users and spectators. This statement should be structured so the Proposal Evaluation Committee has a clear understanding how your concession will be structured, operated, staffed and what services will be provided; and
 - 5) Provide identification of key personnel who will be involved in the management and operation of the facility, or any other information to demonstrate that the Respondent can effectively and efficiently deliver the desired services. This portion of the response should include a resume of the Respondent and/or the Respondent’s team, including verifiable references, and the name, title, address, email and telephone number of the individual(s) who will have authority to negotiate and contractually bind the firm; and
 - 6) Provide a clear and concise summary of the Respondent’s plan to provide compensation to the County in any combination of monthly/annual concession payments, gate or concession revenue sharing, capital improvements to the facility, or other combinations thereof; and
 - 7) Include development timeline. Include specifically the areas of interest; state specifically what facilities are to be considered and proposed timelines for construction or phasing of the project; provide concept plans of the overall project; and
 - 8) Include in your response a five year Pro-Forma to include revenue, expense projections and development costs; and
 - 9) Identify your financing plan as to how the proposed project will be developed, operated, maintained and improved upon. Provide preliminary documentation that supports the internal availability of equity funds to finance any portion of your Proposal not financed with debt. Identify possible lenders and terms; and include audited financial statements from the Respondent and joint venture partners; and
 - 10) Describe experiences where you demonstrated excellence in environmental protection and conservation, principles, methods and techniques. Include knowledge of environmental laws and planning, development and zoning laws as they pertain to the operation of the proposed project; and
 - 11) Provide confirmation that the Respondent is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency; and
 - 12) Provide detailed information of any type of litigation, claims, judgments or government investigations (previous or pending) involving any principal, participant, individual financial backer or investment group, or legal business entity associated with this Proposal; and
 - 13) Include any other information deemed relevant or important for the County to consider; and
 - 14) Include completed Attachment A, Attachment B and Attachment C. Your signed response to the Proposal and Attachment C indicate your agreement to these conditions.

5. **EVALUATION PROCESS:**

- 1) MCPRD’s Contract Administrator will establish a Proposal Evaluation Committee to review the Proposals based on the following evaluation criteria:
 - a. Technical experience: The Respondent’s experience in sports field management, operations, or experience in an alternate facility, and experience in concessions and

- associated agreements, along with the reputation for satisfactory work, judgment, and reliability. (30%)
- b. Management capability: Respondent's and/or Respondent's management team's ability to effectively and efficiently deliver the desired service, including an emphasis on a willingness to collaborate with County staff and local sport groups and/or organizations. (30%)
 - c. Financial return/expense to the County: The ability of the Respondent to provide the County with a financial return that best meets the needs of the Complex or an alternate facility and MCPRD. (20%)
 - d. Financial Statement and Ability: A demonstration that the Respondent has the financial ability and fiscal resources to adequately manage and operate the Complex or alternate facility. (20%)
- 2) Respondents to this ITN and their agents may only contact the Contract Administrator at MCPRD during the pre-submission process. If Respondents contact any other employee of the County, including the Proposal Evaluation Committee members regarding this ITN, the Respondent's Proposal may be disqualified from further consideration at the County's sole discretion.
 - 3) The Proposal Evaluation Committee may select one (1) or more Primary Proposals, along with any Alternate Proposals for MCPRD's staff to negotiate and finalize the contract. Under no circumstances shall multiple awards be made for the same type concession or concession theme.
 - 4) The Proposal Evaluation Committee makes a recommendation to the MCPRD Director (Director), as to the Primary Proposal and/or any Alternate Proposal to be considered for final award.
 - 5) The Director evaluates the recommendation from the Proposal Evaluation Committee and takes his recommendation to the Parks Commission Board for final selection of the successful Respondent.

6. **SUBMISSION GUIDELINES**

A. Electronic Submission:

Respondents shall be submitted electronically to WWW.BIDSYNC.COM prior to the bid closing:

- o Attachment A
- o Attachment B
- o Attachment C
- o Proposals

B. Inquiries and Notices:

All administrative inquiries concerning information herein shall be addressed to:

Maricopa County Parks and Recreation Department
ATTN: Emily Miller, Contract Administration
Lake Pleasant Regional Park
41835 N. Castle Hot Springs Road
Morristown, AZ 85342

Telephone: 928-501-9211
Email: emilymiller@mail.maricopa.gov

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

C. Exceptions to the Solicitation:

The Respondent shall identify and list all exceptions taken to all sections of SERIAL 171237-ITN and list these exceptions referencing the section (paragraph) where the exception exists and identify the exceptions and the proposed wording for the Respondent's exception under the heading, "Exception to the PROPOSAL Solicitation, SERIAL 171237-ITN." Exceptions that surface elsewhere and that do not also appear under the heading, **"Exceptions to the PROPOSAL Solicitation, SERIAL 171237-ITN," shall be considered invalid and void and of no contractual significance.**

The County reserves the right to reject, determine the Proposal non-responsive, enter into negotiation on any of the Respondent exceptions, or accept them outright.

D. General Content:

The Proposal should be specific and complete in every detail. It should be practical and provide a straightforward, concise delineation of capabilities to satisfactorily perform the contract being sought.

The Respondent should not necessarily limit the Proposal to the performance of the services in accordance with this ITN but should outline any additional services and their costs if the Respondent deems them necessary to accomplish the program.

E. County Rights:

This ITN does not obligate the County or its departments to award a contract or complete the ITN project, and County reserves the right to cancel, delay or suspend the ITN solicitation if County considers it to be in its best interest. County is not liable for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, or award. The County further reserves the right to:

- 1) Amend the ITN;
- 2) Allow revision of Proposals after the submission of Proposals and before award for the purpose of obtaining best offers or best and final offers;
- 3) Extend the deadline for submitted Proposals; and waive minor irregularities, informalities, or failures to conform to the ITN;
- 4) Investigate the references of the past performances of any Respondent with respect to successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers and any other employment related claims;
- 5) Reject any Proposal response or to reject all Proposal responses at any time prior to execution of contract, upon good cause and the County's finding that it is in the public interest; and
- 6) Negotiate contractual terms or conditions with Respondents.

The County reserves the right to reject, determine the Proposal non-responsive, enter into negotiation on any of the Respondent exceptions, or accept them outright.

7. **POST PROPOSAL RESPONSIBILITY AND TIMELINE REQUIREMENT:**

A. Successful Respondent Responsibilities:

From the time of submittal of the Proposal in response to the ITN, the following will be completed within the time frame specified unless otherwise prevented due to complications in the completion of required environmental studies, planning or permitting.

- 1) The successful Respondent will provide documentation from a financial institution or other credible source demonstrating that funding is available to complete the proposed project

- within the time frame specified in the final contract before submission of the contract to the Maricopa County Board of Supervisors. The project may be completed in phases.
- 2) The successful Respondent will complete the required environmental studies, if needed, within two (2) years from the effective date of the final contract.
 - 3) The successful Respondent will complete planning and permitting requirements, if needed, for the initial phase(s), if phased, or the entire project if not phased within two (2) years from the Effective Date of the final contract. Permitting and approval agencies may include, but are not limited to, Maricopa County Planning and Development, Maricopa County Environmental Services, City of Phoenix, Arizona Department of Environmental Quality and the Maricopa County Association of Governments. The successful Respondent will be responsible for identification of the appropriate permitting agencies and the payment of all fees unless otherwise stated in the final contract.
 - 4) The successful Respondent will have obtained a Certificate of Occupancy and the initial phase or Project will be open to the public within two (2) years from the Effective Date of the final contract.
 - 5) The successful Respondent will complete subsequent phases of development, if applicable, within the time frame(s) specified in the final contract.

B. County Responsibilities:

County will facilitate and assist, where possible, based on information provided in existing agreements with the identification of development restrictions, concerns, and other applicable items. The County will:

- 1) Facilitate, where possible, the meeting of timelines as stipulated in the ITN and final contract.
- 2) Provide data, if available, to assist in the preparation of required environmental and cultural surveys or other studies as may be required.
- 3) Facilitate all procurement actions necessary to reach a final contract to be presented to the Board.
- 4) Pursue amendment, as needed, of its Master Plan to allow a development opportunity if it is determined in the County's best interest to do so.
- 5) Assist in contacting and working with agencies that have an interest in, or jurisdiction of, the lands around the Park and the development site, such as, but not limited to, the City of Phoenix and any other private utility or governmental agency.
- 6) Provide, if available, all pertinent "as-built" drawings related to Park construction.

7)

ATTACHMENT A

RESPONDENT'S NAME: _____

ADDRESS: _____

P.O. ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

WEBSITE: _____

REPRESENTATIVE: _____

REPRESENTATIVE E-MAIL: _____

BY SUBMISSION AND ACCEPTANCE OF THE TERMS AND CONDITIONS AS STATED THROUGHOUT THE INVITATION TO NEGOTIATE, I AGREE TO PARTICIPATE IN THE COUNTY PROCUREMENT PROCESS PERTAINING TO THE UPGRADE, MANAGEMENT, OPERATION, MAINTENANCE AND EXPANSION OF THE SPORTS COMPLEX OR ALTERNATE FACILITY AT PARADISE VALLEY URBAN PARK. I RECOGNIZE THAT PARTICIPATION IS VOLUNTARY AND THAT I AM NOT OBLIGATED TO PARTICPATE IN THE OPPORTUNITY PRESENTED, BUT WILL DO SO ON MY AGENCY'S MISSIONS, DESIRES AND PRUDENT BUSINESS DECISIONS. IT IS RECOGNIZED THAT BASED ON FORMAL ACCEPTANCE OF A USE MANAGEMENT AGREEMENT ("CONTRACT") EXECUTED BY MARICOPA COUNTY AND MY AGENCY, I WILL BE RESPONSIBLE FOR COMPLIANCE WITH ALL OF THE TERMS AND CONDITIONS AS STATED IN THE CONTRACT.

RESPONDENT'S SIGNATURE

DATE

ATTACHMENT B

REFERENCES

List three (3) governmental agencies or private firms with whom you have conducted business transactions during the past three (3) years. At least two (2) of the references named are to have knowledge of your debt payment history. References to be listed should be those in which you have conducted similar business with as for the concession you have proposed.

1. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

2. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

3. COMPANY NAME: _____
ADDRESS: _____
CONTACT PERSON: _____
TELEPHONE: _____ E-MAIL ADDRESS: _____

ATTACHMENT C

CONTRACT

Respondent hereby certifies that Respondent has read, understands and agrees that upon acceptance by Maricopa County of the Respondent's Proposal, that the Proposal will be incorporated into a binding Contract. Respondent agrees to fully comply with all terms and conditions as set forth in the Maricopa County Procurement Code, and amendments thereto, together with the specifications and other documentary forms herewith made a part of this specific procurement.

BY SIGNING THIS PAGE THE SUBMITTING RESPONDENT CERTIFIES THAT THE RESPONDENT HAS REVIEWED THE ADMINISTRATIVE INFORMATION AND DRAFT USE MANAGEMENT AGREEMENT'S TERMS AND CONDITIONS LOCATED AS EXHIBIT 4 TO THIS ITN AND AGREES TO BE CONTRACTUALLY BOUND BY THE TERMS AND CONDITIONS AS OUTLINED IN THE FINAL CONTRACT WHEN EXECUTED BY MARICOPA COUNTY .

Small Business Enterprise (SBE)

RESPONDENT (FIRM) SUBMITTING PROPOSAL

FEDERAL TAX ID NUMBER

DUNS #

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY

STATE

ZIP

DATE

WEB SITE

EMAIL ADDRESS

EXHIBIT 1

VENDOR REGISTRATION PROCEDURES

BidSync.com Registration is FREE and REQUIRED for all Vendors.

Register On-line at
https://www.bidsync.com/SupplierRegister?ac=register&preselected_plan=free&

Upon completion of your on-line registration, you are responsible for updating any changes to your information. Please retain your Login ID and Password for future use.

For assistance, please contact BidSync Vendor Support Department via phone or email, during regular business hours: 1-800-990-9339 or agencyssupport@BidSync.com

EXHIBIT 2 – Scope of Services/Work/ Specifications and Map

1. CONCESSION GUIDELINES

The desire of County is for the Respondent to promote, manage, operate, maintain and upgrade the existing sports complex which may include, but is not limited to, a plan for expansion of the existing Complex that would upgrade the existing facilities while providing a more efficient use of the property (“Primary Proposal”). The County will also entertain any reasonable alternate recreational proposals (“Alternate Proposal”) to expand recreational opportunities available to the recreating public and evaluate them against policy, procedures and development guidelines. All development must be recreationally oriented and be open to the public. Recreational uses must also be consistent with the land use requirements outlined in the Paradise Valley Urban Park Master Plan (“Master Plan”).

- A. The existing Complex is well known to local and national baseball enthusiasts and has been satisfactorily maintained. The existing Complex consists of the following:
- Ten (10) Batting cages, fenced and illuminated
 - Batting training facility
 - Arena multi-purpose field, fenced and illuminated
 - Mudville Training facility
 - Lighted grass infield
 - Pitching mounds
 - Two (2) batting practice tunnels for live pitch
 - Automatic soft toss machine
 - Whiffle ball and soft toss tunnel
 - Tee area
 - Mini Golf
 - Concession/restroom building
 - Paved parking facilities
 - Infrastructure includes City of Phoenix Water and APS Electrical Service
- B. Activities at the Complex must be family-oriented and not be offensive to the general population. Examples of concessions that will not be considered include, but are not limited to: gambling/wagering; activities with extreme noise decibels and/or light illumination (must be within specified limits dictated by City of Phoenix Ordinances).
- C. No person shall be denied use of the facility because of race, sex, age, handicap, disability, color, religion, sexual orientation, or national origin. The successful Respondent and their contractors shall conform to all applicable federal, state and local laws, statutes, regulations, codes, ordinances, etc., e.g. immigration, health, building, zoning, environmental and safety codes, and the Americans with Disabilities Act of 1990, as amended.
- D. The successful Respondent shall not discriminate against any employee or applicant for employment because of race, sex, age, religion, national origin or disability.
- E. The successful Respondent will receive all revenue generated at the facility and will be expected to provide compensation to the County for use of the facility. Respondent’s Proposal(s) shall include compensation to the County in any combination of monthly/annual concession payments, gate or concession revenue sharing, and/or other options (such as facility improvements) that benefit the Complex and County. The County will ultimately decide what combination of the above described compensation best meets the County’s needs, but compensation is expected.

EXHIBIT 2 – Scope of Services/Work/ Specifications and Map (continued)

- F. The successful Respondent shall be responsible for all costs associated with promotions, upgrades, management, maintenance and operations of the Complex, including but not limited to providing adequate staffing, scheduling, advertising, event management, fee collection, landscape and field maintenance, equipment, utility costs including water, electrical, garbage and refuse collection, sanitation, and all other tasks normally associated with the management, promotion, maintenance and operations of a sports field or alternate facility.
- G. The successful Respondent shall be responsible for all planning, permitting and studies (if needed), and construction, performance guarantees and associated costs.
- H. The successful Respondent is responsible for all costs incurred for, or in conjunction with, capital improvement projects on the Complex.
- I. The successful Respondent shall indemnify and save harmless the County or any of its departments, agencies, officers, officials or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance of the successful Respondent.
- J. The successful Respondent, at its own expense, shall secure and maintain General Liability insurance throughout the tenure of the final Contract subject to the combined single limits of \$2,000,000 per occurrence and \$4,000,000 in aggregate.

2. SPECIFICATIONS

Design a commercial project with a recreational theme open to the public. The desire of County is to upgrade the existing Complex or to provide an alternate use.

- A. Complex amenities upgrades/improvements may include, but are not limited to, the following:
 - 1) State-of-the-art batting cages, food and beverage facilities, fencing and repair of existing structures. Lighting will be in accordance with zoning requirements of the City of Phoenix and will be shielded and/or placed so as to reduce “lighting the horizon” with the intent of minimizing complaints from neighboring communities and/or Park visitors.
 - 2) Upgrades to Miniature Golf course.
 - 3) Additional softball, baseball or multipurpose fields in undeveloped property.
 - 4) Additional amenities may include items pertinent to recreation activities (dependent upon Master Plan, permitting, facilities, development restrictions and approval by MCPRD and the County).
- B. Alternate Use

The County’s desire is to have available to residents and visitors of the County additional, quality recreational concessions at the Park while remaining focused on MCPRD’s mission – “to provide recreational and educational opportunities while protecting park resources.”

EXHIBIT 2 – Scope of Services/Work/ Specifications and Map (continued)

- 1) Concession is to include family-oriented and recreational activities, so that the users can enjoy a safe, meaningful outdoor experience.

- 2) Provide complete description of the recreation concession to include how it will supplement the existing recreation concession currently located at the Park and identify your “target audience.” Recreation concession examples:
 - Additional sporting fields (soccer, football)
 - Additional training facilities
 - Softball/Baseball field to support Little Leagues (Boys/Girls)
 - Gymnasium building or other indoor facilities
 - Renovate existing building to include new services
 - Renovate existing sports facilities to include new sports-related venue
 - Expanded food concessions
 - Expanded restroom facilities
 - Expanded parking
 - Site development and improved infrastructure (offsite and onsite)
- 3) Elaborate on the uniqueness of your Proposal. Include an artist’s concept of your recreation concession illustrating such additional features as recreational activity layout, landscaping and lighting.
- 4) A market / feasibility study for alternate activity shall be provided to the County by successful Respondent during the negotiation phase.

C. Option.

There is an option to incorporate an additional 0.295 acres. In order to incorporate additional land, the successful respondent shall provide the following modifications:

- 1) The existing water storage tank and related appurtenances (fixtures) must be removed. The successful Respondent shall be responsible for the full recycle or disposal of the fixtures per code requirements.
- 2) The existing APS pole and panel shall be relocated to the well site, approximately 100’ south of its current location. The successful Respondent will be responsible for all APS coordination and costs associated with relocation of the pole and panel.
- 3) The existing fencing and gate shall be relocated to the existing well site to protect the well.
- 4) If relocation of the existing well is desired by the successful Respondent, the Respondent shall be responsible for capping the existing well and providing a new well drilled west of Highway 51, at the Paradise Valley Golf Course site. Respondent will be responsible for all permits, registrations and costs associated with the capping of the existing well and drilling of the new well.

D. It is not the intent of County to preclude restaurant concession or beer sales as long as they do not violate the family oriented nature of the Complex or alternate facility identified in this Solicitation. The intent of the successful Respondent for such sales must be identified in the Proposal and approval is subject to the successful Respondent obtaining the proper license/permits after negotiation of a Contract between Parties.

E. Proposals shall also include information on Respondent sponsored community events centered on summer recreation programs, community outreach programs, etc.

EXHIBIT 2 – Scope of Services/Work/ Specifications and Map (continued)

(Not to Scale, acreages are approximate)



**EXHIBIT 3 –MARICOPA COUNTY COURTS MASTER PLAN
(Excerpts)**



Courts Master Plan Workshop
August 25, 2014

FINDINGS—NORTHWEST REGIONAL CENTER

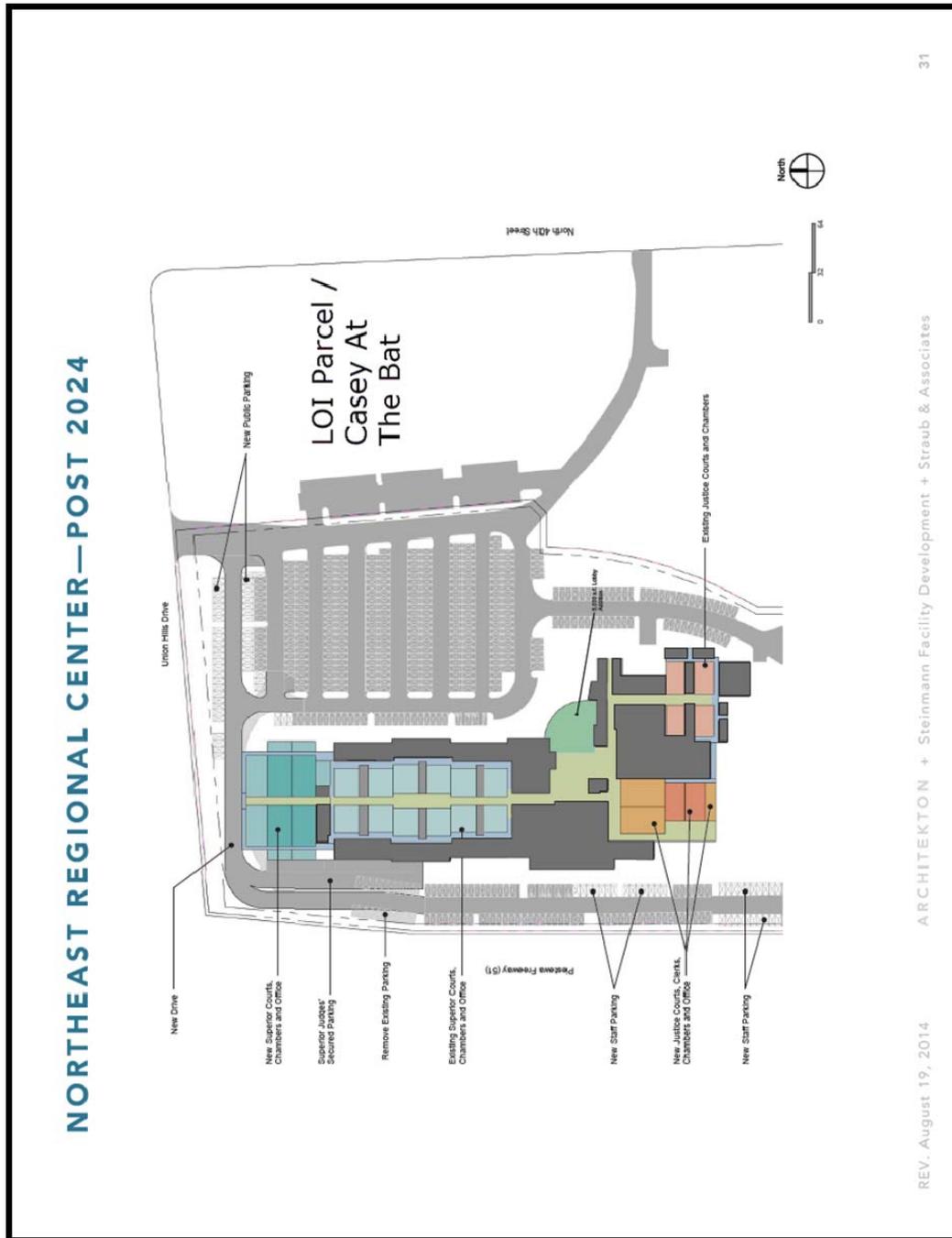
- Adequate—no change until post-2024

FINDINGS—NORTHEAST REGIONAL CENTER

- Transfer filings increase to additional courtrooms in East Courts Building
- Post 2024—Accommodate an additional 6 to 8 courtrooms
- Relocate 20,000 sf for Adult Probation Northport Office
- Expand Lobby, Public Resource Center and Public Waiting area by 5,000 sf
- Post 2024—Accommodate construction of 2 additional Justice Courts

REV. August 19, 2014 ARCHITEKTON + Steinmann Facility Development + Straub & Associates 30

EXHIBIT 3 –MARICOPA COUNTY COURTS MASTER PLAN CONTINUED
(Excerpts)



31

ARCHITEKTON + Steinmann Facility Development + Straub & Associates

REV. August 19, 2014

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EXHIBIT 4 - DRAFT COUNTY AGREEMENT
(Draft Agreement is included to illustrate type of provisions desired by the County.
Final terms of the Agreement will be determined based on negotiations of the Parties)

Use Management Agreement

Between

Maricopa County

And

For the Promotion, Management, Operation, Maintenance and Improvement of the

_____ **located at Paradise Valley Urban Park**

This Use Management Agreement (hereinafter referred to as "Agreement") is entered into between Maricopa County, a political subdivision of the State of Arizona (hereinafter referred to as "County"), acting on behalf of its Parks and Recreation Department (hereinafter referred to as "MCPRD") and _____ (hereinafter referred to as "Concessionaire"). The County and the Concessionaire are collectively referred to as "Parties" or individually as a "Party."

RECITALS

WHEREAS, the County is authorized to enter into this Agreement pursuant to A.R.S. §§11-201, 11-251 and 11-933; and

WHEREAS, the County believes the public interest can best be served by contract operation of the sports complex at Paradise Valley Urban Park which comprises a portion of the Maricopa County Regional Parks System; and

WHEREAS, this Agreement is the result of a solicitation released by the County on behalf of MCPRD (Serial #171237-ITN: Promote, Manage, Operate, Maintain And Improve An Existing Sports Complex Or Provide Alternate Recreational Facility At Paradise Valley Urban Park) on November 17, 2017; and

WHEREAS, Concessionaire is the successful respondent to the Invitation to Negotiate (ITN) described immediately above and desires to improve the sports complex by performing the project(s) (the "Project" or "Project(s)") set forth in Concessionaire's ITN response (the "ITN Response"); and

WHEREAS, the existing sports complex is situated on approximately 5 acres of land owned by the County and managed by MCPRD, which is depicted and legally described on Exhibit 4.0 Complex Site Plan and Legal Description (the "Complex"); and

WHEREAS, each of the County and Concessionaire desires that the other provide certain recreational opportunities and programs as determined by market conditions and prudent business practices, and the County and Concessionaire desire to perform such Project(s) upon and subject to the terms and conditions hereinafter set forth; and

WHEREAS, this Agreement will require administrative or operational action from time to time to carry out the intent of this Agreement, the County desires to delegate to the MCPRD Director or his or her designee, the authority and responsibility for proper administration of this Agreement, whether or not specific authority is granted in any provision of this Agreement; and

WHEREAS, the Parties agree the intent of this Agreement is solely for the development, operation, maintenance, management and improvement of the Complex and/or Project(s) and is not intended to convey any interests in land or any property rights, except those specifically provided for in this Agreement.

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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AGREEMENT

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements hereinafter contained and other good and valuable consideration, the sufficiency and adequacy of which the Parties acknowledge, the County and the Concessionaire agree as follows:

1. **Recitals.** The Recitals are true and, by this reference, shall be incorporated herein and made a part of this Agreement.
2. **Definitions:**
 - A. **Additional Minimum Fee:** An annual payment to be paid to the County by the Concessionaire based upon a percentage of revenue beyond the Minimum Fee (as defined below). Percentage of revenue, type of revenue to which the additional payment applies and a payment schedule will be due in accordance with the respective agreement for services.
 - B. **Adjusted Gross Revenue:** All revenue generated by a concession adjusted downward for MCPRD authorized deductions.
 - C. **Generally Accepted Accounting Principles (“GAAP”):** Rules to which accountants adhere when preparing financial statements. The GAAP exist to ensure that American accountants are using the same or almost the same standards so that comparison of financial statements between or within a company is easy and accurate. They also promote transparency in accounting.
 - D. **Gross Revenue:** Gross revenue is the money generated by all Concessionaire’s operations (sales of goods and services to customers) before deductions are taken for expenses.
 - E. **Minimum Fee:** A guaranteed base concession fee paid to the County for a: (1) specified fixed amount; or (2) based on a percentage of total gross or adjusted gross revenue (as defined in the Agreement) as a threshold amount, of which the payment schedule will be outlined in the Agreement.
3. **Incorporation of ITN.** The Concessionaire agrees the Serial #171237-ITN: Promote, Manage, Operate, Maintain and Improve the Existing Sports Complex or Provide an Alternate Recreational Facility at Paradise Valley Urban Park and the ITN Response submitted by the Concessionaire are incorporated and made part of this Agreement. To the extent of any conflict between the provisions of the ITN, ITN Response and this Agreement, the provisions of this Agreement shall supersede and control.
4. **The Project(s):**
 - A. The County hereby grants the Concessionaire the right to improve the County land described above with a family recreational complex to be known as _____, together with the right to operate, manage, maintain, and improve said Complex as well as provide additional public recreational amenities (“Scope”).
 - B. The Project(s) shall be substantially consistent with the proposal submitted by Concessionaire in the ITN Response. Details of the Project(s) shall conform to each of the descriptions as set forth in Exhibits 4.01 through 4.11 which are attached hereto and made a part hereof.
 - C. Within thirty (30) business days of the permitting of construction, or notice to the County of moving forward to construct a lesser permitted amount, Concessionaire will provide to County a proposed construction budget setting forth the approximate cost of each element of the construction. Concessionaire anticipates the cost of construction to be approximately

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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_____. If the constructed project cost is substantially less than the amount proposed by Concessionaire, this Agreement is subject to renegotiation.

5. Term.

- A. The term of this Agreement will be twenty-five (25) years (the "Term"), commencing on the date it is executed by the Maricopa County Board of Supervisors (the "Effective Date").
- B. This Use Management Agreement may be renewed for a period of ten (10) years ("Renewal Term") subject to each of the following conditions:
 - 1) The Concessionaire shall provide written notice of a request to renew not later than six (6) months prior to the date the Term is scheduled to expire.
 - 2) The Renewal Term shall be upon the same terms and conditions as the final year of the initial Term except that the fees at the time of the renewal shall be the Minimum Fee in accordance with the Maricopa County published fee schedule in effect on the renewal date and the Additional Fee shall be based on _____% of the adjusted gross income of the Complex.
 - 3) The renewal shall be approved by the Maricopa County Superior Court pursuant to a published Master Plan for development of a court complex on the Property.
 - 4) The renewal shall be approved by the Maricopa County Board of Supervisors.

6. Termination.

- A. This Agreement may be terminated for cause in whole or in part, at any time, by the County, upon sixty (60) days prior notice to the Concessionaire without any penalty or liability to County. Concessionaire and its employees, agents, officers, directors, members, successors, or assigns hereby waive any and all rights to bring any claim against County or its employees, agents, officers, directors, members, successors or assigns from or relating in any way to County's termination of this Agreement. Representative reasons for "cause" include, but are not limited to: (i) the real property reverts to the agency from which any patent was received; (ii) the real property is no longer useful for recreational purpose; (iii) new requirements imposed upon the County make a continuation of the Agreement unreasonable; (iv) any occurrence of default, as defined herein; or, (v) insolvency.
- B. The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- C. This Agreement may be terminated without cause with mutual agreement of the Parties. The Party requesting the termination must submit its request, in writing, a minimum of one hundred eighty (180) days in advance of the requested termination date. Said request for termination will be sent to the other Party by notice as provided for in this Agreement. If this request for termination is initiated by the Concessionaire the County may select an interim operator, or may choose to become the interim operator to act as the Concessionaire until such early termination date. Within 45 days of the date the interim operator commences operations, or sooner if the Parties agree, the Concessionaire shall pro-rate any membership fees or fees paid for a future service and shall pay such pro-rated amount to the interim operator. All security deposits paid to the Concessionaire for tournaments, events or functions to be held at the Complex after the date this Agreement is terminated shall also be paid to the interim operator.
- D. Should the Concessionaire, with the consent of the County, continue to provide the services described herein after the expiration of the Term and any Renewal Term, without having entered into a subsequent Agreement of like nature and content to this Agreement, such

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continued service shall be deemed a holdover of the licensed facility on a month-to-month basis, not to exceed a period of six (6) months, with all of the terms and conditions of this Agreement to continue in full force and effect. If the Parties have not entered into a new agreement by the end of the six (6) month period, the Agreement will expire.

7. Default.

- A. It shall be a default and breach of this Agreement by Concessionaire if any of the following shall occur at any time during the Term or Renewal Term:
- 1) Failure to complete construction (as identified in Exhibit 4.04 - Development, Improvements and Timeline) as intended by this Agreement.
 - 2) Failure to make payment of any monetary sums specified to be paid by the Concessionaire under this Agreement on or before the date the same shall become due, and such failure shall be continued for a period of thirty (30) days after notice of such default is given to the Concessionaire.
 - 3) Failure to operate and maintain the Complex pursuant to the terms and conditions of this Agreement, and any exhibits hereto, where such failure shall continue for a period of thirty (30) days after notice of such default is given to the Concessionaire, provided, however, that if such default is of a nature that it cannot reasonably be cured within said thirty (30) days, then the cure period may be extended by mutual agreement of the Parties, in writing, for such longer time as may be reasonably necessary, so long as the Concessionaire commences to cure failure within said thirty (30) day period, in good faith and with due diligence, and thereafter diligently and continuously pursues the same to completion.
 - 4) Commencement by petition to have the Concessionaire adjudicated bankrupt or Concessionaire becomes involved in any other proceeding under any Federal or State law relating to bankruptcy, bankruptcy reorganization, insolvency, or relief of debtors is filed or instituted by the Concessionaire or is filed or instituted against the Concessionaire as debtor, and not dismissed within ninety (90) days from the date of such filing or institution, or the Concessionaire fails to notify the County of any such filing within twenty (20) days of the filing date of the petition.
 - 5) Appointment of a receiver, guardian, conservator, trustee or assignee, or any other similar officer or person to take charge of all of the property of the Concessionaire, and such appointment is not vacated within ninety (90) days after the date of appointment.
 - 6) Any general assignment for the benefit of creditors by Concessionaire.
 - 7) All of the Concessionaire's assets located at the Complex or interest in the Complex being subjected to attachment, execution or other judicial seizure.
- B. Upon default hereunder by the Concessionaire, the County shall be entitled, at its discretion and selection, to exercise the following remedies:
- 1) Terminate this Agreement by giving the Concessionaire notice of termination. On the giving of the notice of termination, all of the Concessionaire's rights in the Complex and under this Agreement shall terminate. Promptly after notice of termination, the Concessionaire shall: (1) surrender and vacate the Complex, and the County may enter and take possession of the Complex and eject all parties in possession, or eject some and not others, or eject none; or in the alternative, the County may (2) require the Concessionaire, at its sole cost and expense, to demolish and/or remove all improvements on the Complex and return the property to a condition as similar as possible to the condition of the property at the time of execution of this Agreement. Termination under this Section shall not relieve the Concessionaire of the obligation for payment of any sums then due to the County or from any claim for damages previously accrued or then accruing against the Concessionaire. If the Agreement is terminated in accordance with these provisions, the Concessionaire hereby covenants to peaceably and quietly surrender the Complex to the County and to execute and deliver to the County such instruments as

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shall be required by the County, to properly evidence termination of the Concessionaire's rights hereunder and its interest herein.

- 2) The County may exercise any other remedy available at law or in equity.
- C. It shall be a default and breach of this Agreement by County if the County fails to perform any of its obligations hereunder and such failure to perform continues for a period of thirty (30) days after written notice thereof from the Concessionaire to the County (unless such failure cannot reasonably be cured within thirty (30) days, in which event the County shall have commenced to cure said breach or failure within said thirty (30) day period and shall diligently pursue cure of the failure or breach to completion to avoid being in default).
- D. Should the County continue to be in default without pursuit of a cure, the Concessionaire may terminate this Agreement with ninety (90) days written notice to the County. In addition to any rights the Concessionaire may have under this Agreement or at law or in equity by reason of a breach by the County, the Concessionaire may within the thirty (30) day period after the ninety 90 day written notice, at its option, without waiving any other rights or remedies (including the right to recover damages), incur any reasonable expense necessary to perform the obligation of the County specified in such notice and deduct such expense from the fees or other charges due under this Agreement. The Concessionaire may exercise any other remedy available to the Concessionaire at law or in equity.

8. Surrender.

Upon the expiration date or upon any agreed termination date for reasons other than the default of the Concessionaire, the Concessionaire:

- A. Shall, within (60) days from the expiration date or termination date of this Agreement, be required, at the County's sole discretion, to conduct one (1) or more of the following tasks:
 - 1) Execute a Quit Claim Deed (QCD) to transfer ownership of the real property improvements situated on the Complex to the County.
 - 2) Demolish and/or remove all improvements on the Complex and return the property to a condition as similar as possible to the condition of the property at the time of execution of this Agreement.
- B. May remove all of its personal property from the Complex for up to a period of sixty (60) days from the expiration date or termination date of this Agreement. Any property of Concessionaire not removed within such sixty (60)-day period shall be deemed to have been abandoned by Concessionaire and County may dispose of such property in any fashion it may deem desirable. Concessionaire shall be responsible for paying all reasonable costs incurred by the County, if any, to remove and dispose of abandoned items; and
- C. Shall, within (60) days from the expiration date or termination date of this Agreement, remove all garbage and debris, to include inoperable or obsolete equipment, from the Complex. If Concessionaire fails to remove all garbage and debris (including inoperable or obsolete equipment) within the allotted time, Concessionaire shall be responsible for paying all reasonable costs incurred by the County to remove and dispose of said items.

9. Dispute Resolution; Attorneys' Fees.

Any dispute arising out of or relating to this Agreement shall be submitted to mandatory, binding arbitration. Notice of the dispute must be in writing and made pursuant to Section 15, and shall provide a summary of the issue of the dispute. The Parties shall confer within thirty (30) days of the Parties' receipt of such notice and must, within ten (10) days after conferring, agree on a mutually

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acceptable arbitrator. If the Parties cannot agree, each Party shall name one (1) arbitrator, who shall together select a third arbitrator. Any decisions made shall be made by a majority of the panel of three (3) arbitrators. Such arbitration shall be binding and subject to enforcement action.

10. **Financing.**

- A. Thirty (30) days prior to the Effective Date, the Concessionaire will provide, to the County's satisfaction, approved loan documents, letter of credit or other documentation to demonstrate to the County's satisfaction that the Concessionaire has secured adequate financing to complete those Project(s) identified in the ITN Response. Documentation should include financing structure, identifying percentages and amounts of debt and equity as well as the proposed financing terms, including interest rates. The Parties acknowledge that Concessionaire may fund its obligations hereunder out of assets of the Concessionaire or its affiliates without using third-party financing; however, evidence of adequate financing shall still be required within thirty (30) days of the Effective Date. Failure to provide satisfactory evidence of financing to the County within the thirty (30) day period may at the County's discretion, result in termination of the negotiations to enter into this Agreement. The County may extend this thirty (30) day requirement in writing, if Concessionaire requires more time to secure satisfactory documentation; however, under no circumstances shall the extension exceed one hundred eighty (180) days. In the event the Agreement is terminated due to Concessionaire's failure to provide satisfactory evidence of financing, the County shall bear no liability to Concessionaire for any cost, claim, loss or damages resulting from the termination.
- B. The County does hereby consent and agree that the Concessionaire may pledge this Agreement as security including any of the Concessionaire's furniture, fixtures, equipment and inventory as related to operation of its business which is the subject matter of this Agreement, by chattel mortgage, security agreement or other security-type instrument ("Security Instrument") to assure the payment of a promissory note or other obligations of the Concessionaire. The Concessionaire may not mortgage or encumber any improvements that are permanently affixed to the land or any lands upon which the Complex lies. Improvements that can be disassembled and removed without damage to the underlying real estate are not considered permanently affixed (e.g. above ground water treatment, sewage). In the event said security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, written approval of the County must be obtained prior to any assignment of this Agreement.
- C. From and after the date that Concessionaire provides County with written notice that a lien or security interest has been granted to lenders who advance loans to Concessionaire from time to time (a "Lender") and the address of such Lender, County shall give to such Lender copies of all notices of default, notices of termination of this Agreement and notices of termination of the Concessionaire's right of possession at the same time as, and whenever, County shall give any of the foregoing to Concessionaire. Any notice or other communication which any Party shall desire or is required to give to Lender shall be deemed to have been duly given or served if given by that Party in accordance with the notice provision of this Agreement. The addresses of Lenders shall be provided to County by Concessionaire from time to time.
- D. Notwithstanding any other clause in this Agreement, Concessionaire shall have the right, without the County's consent to pledge or hypothecate Concessionaire's interest in this Agreement to Lenders by appropriate security instrument encumbering Concessionaire's interest in this Agreement and the fixtures, equipment, improvements and personal property of Concessionaire (a "Security Instrument"), provided that no such Security Instrument shall in any way affect, the County's interest in the Complex or in this Agreement.
- E. Each Party shall, provided each request is true, upon not less than thirty (30) days prior to request by the other, promptly execute, acknowledge and deliver to the requesting Party or to their respective Lenders a written statement certifying (a) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full

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force and effect as modified and stating the modifications), (b) the dates, if any, to which the sums payable hereunder by the Concessionaire have been paid, (c) whether to the knowledge of the County or the Concessionaire, as the case may be, there are then existing any defaults under this Agreement or any defenses or offsets to the payment of charges and, if so, specifying the same, and (d) confirming other provisions of this Agreement. Any such statement delivered pursuant to the foregoing may be relied upon by any prospective purchaser or lender (including assignees) of the Concessionaire.

- F. In the event a Lender to the Concessionaire has notified the County that it holds a security interest in this Agreement, the Lender will have the right to hold insurance proceeds and approve the disbursement procedure for the proceeds. Reconstruction will be done in consultation with any such Lender.
- G. The County agrees that no Lender shall be liable or responsible for:
- 1) Any acts or omissions of the Concessionaire prior to the date the Lender acquires all of the Concessionaire's rights and interests under the Agreement pursuant to a foreclosure of a security interest or transfer in lieu thereof (although nothing herein shall be deemed to relieve a Lender from any obligation to cure any defaults which continue after any foreclosure and acquisition of the interests of Concessionaire by the Lender, and which are reasonably capable of being cured by the Lender); or
 - 2) Any obligation of the Concessionaire to indemnify the County or to hold the County harmless for any actions, omissions, events, or occurrences which arises or occurs prior to the date a Lender acquires the Concessionaire's rights or interests under the Agreement pursuant to a foreclosure of a security interest or transfer in lieu thereof.
11. **Indemnification and Insurance.**
- A. Concessionaire, for itself, its agents, officers, directors, partners, vendors, contractors, employees, assignees, sub-concessionaires, licensees, invitees or any and all other persons claiming rights through the Concessionaire, shall, to the fullest extent permissible by law, indemnify, defend and hold harmless the County, including agents, officers, directors, governors and employees thereof, from and against any and all loss or expense of any nature whatsoever, including negligence by the County, incurred as a result of any claim or suit of any nature whatsoever, which arises in any way, either by neglect, willfulness, action, omission to act or other failure of any nature whatsoever pursuant to this Agreement. Concessionaire shall be liable and responsible for, including but not limited to, reasonable attorneys' fees, court costs, awards and other expenses relating to the defense against claims or litigation, incurred by the County. This clause shall, in all instances, be interpreted to find that the obligation to defend, indemnify and hold harmless does fall to Concessionaire.
- B. The Concessionaire shall maintain the following insurance coverage:
- 1) Public liability insurance, including bodily injury/property damage, auto liability, products and completed operations liability, and contractual liability, providing limits of no less than two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) aggregate limits, or evidence of self-insurance acceptable to the County, for injuries or damage received or sustained by any person(s), or property at the Complex. The insurance policy must include coverage for environmental clean-up and pesticide/herbicide coverage unless documentation is provided by the Concessionaire that this is not available or feasible.
 - 2) Worker's Compensation, if applicable, with limits not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
 - 3) Property insurance in an amount sufficient to rebuild the improvements in case of casualty loss. County will be an "additional payee" pursuant to such policy. Concessionaire will be entitled to receive and shall be obligated to apply insurance

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proceeds to repair or reconstruct damaged improvements. Insurance proceeds shall be disbursed pursuant to customary construction lending practices in the Phoenix, Arizona area, as such repair and restoration is made and subject to such procedures as the County may reasonably require monitoring the application of such proceeds.

The County reserves the right to revise the minimum required limits of insurance during the term of this Agreement provided the changes are consistent with market conditions, prudent business judgment and industry standards.

- C. The County will be named as “additional insured” under all policies of insurance. Copies of all insurance policies or certificates thereof will be made available to the County upon request. Copies of the Certificate of Insurance (COI) will be furnished annually to the County. The County will be given thirty (30) days advance written notice of cancellation of a policy, non-renewal, or change in coverage or limits.
- D. The Concessionaire assumes all risk of loss and shall be responsible for any and all losses to the Complex and or Project(s) and all improvements, acquired or developed within the Complex and or Project(s) after the Effective Date. Loss to the Complex or Project(s) may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), floods, droughts, landslides, rising waters, winds, falling limbs or trees and acts of God. If, prior to commencement of, or during, the Term of this Agreement, any property, real or personal, under the control of the Concessionaire or any buildings or improvements or such fixtures or equipment on, below, above, or appurtenant to the Complex at the commencement of the Term or Renewal Option or thereafter erected, installed or placed thereon shall be destroyed or damaged in whole or in part by any cause except condemnation, the Concessionaire will notify the County immediately. The Concessionaire will immediately secure the area to prevent injury, vandalism or further damage to persons, improvements and contents thereof, and direct its insurer to make any payment to the appropriate Party.
- E. If the destroyed or damaged buildings, improvements, fixtures or equipment under the control of the Concessionaire are capable of restoration, in the reasonable judgment of the County and Concessionaire, this Agreement shall continue in full force and effect, except that established fees payable to the County by the Concessionaire, to the extent not covered by insurance, shall be abated to the extent that the damage or restoration interferes with the Concessionaire’s operations. The Concessionaire agrees to cooperate in the determination of the abatement or other relief to be provided by furnishing all information requested relative to its operations and permitting examination and audit of all accounting records kept in connection with the conduct thereof. Abatement of fees may be negotiated in relation to the percentage of damage. Fee abatement(s) may be granted for a period of not more 180 days. The Concessionaire will, as soon after the damage as reasonably possible, apply for all required permits required to restore damaged improvements, and complete restorations within a date mutually agreeable to the Parties. Should such damage or destruction occur within thirty-six (36) months of this Agreement’s scheduled termination date (as the same may be extended), or if the damage destroys in excess of fifty percent (50%) of the appraised value of the Complex on the date of loss (as determined by an independent appraiser), then the Concessionaire or the County shall have the option to terminate this Agreement. If this Agreement is terminated pursuant to this provision, any insurance proceeds shall be applied first to remove any damaged or destroyed improvements and second to pay any loans to the Concessionaire secured by its interest in this Agreement or any property covered hereby. The balance of the proceeds shall be divided by the County and the Concessionaire in equal proportions.

12. Assignment.

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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Final terms of the Agreement will be determined based on negotiations of the Parties)

- A. The Concessionaire may not assign, sell, transfer or subcontract in whole or in part the Concessionaire's rights or interests in the Agreement without prior written approval of the County, which approval shall not be unreasonably withheld.
 - B. The Concessionaire shall provide at least ninety (90) days prior, written notice of a sale , transfer or assignment of this Agreement so any requested analysis, study and subsequent Maricopa County Board of Supervisors approval can be completed prior to the effective date of the sale or transfer.
 - C. The Concessionaire will deposit with the County an administrative transfer fee of \$2,500.00 upon notification of a potential sale, transfer or assignment. Before the County executes any consent to the sale, transfer or assignment, the Concessionaire must pay any and all costs incurred by the County as a result of the sale, transfer or assignment in excess of the \$2,500 deposit.
 - D. In connection with a full sale, transfer or assignment to a designated assignee, the County may review any information that it deems important for purposes of transfer, sale or assignment of this type of business operation:
 - 1) Review the business and management capability of the designated assignee; and
 - 2) Require a background check including financial profile and arrest record of the designated assignee; and
 - 3) Require that a financial analysis of the Complex operation, including an appraisal of real property improvements and/or furniture, fixtures and equipment that are included in the transaction, be conducted before approving an assignment of the Agreement; and
 - 4) Any information determined to be important for purposes of a sale, transfer or assignment of this type of business.
 - E. The Concessionaire, upon no less than ninety (90) days prior written notice to the County, may partner or subcontract with other entity(ies) to operate units of the Complex, including vendor and event services; provided that, all gross revenues from partners, subcontract, vendors and events shall be included in revenue reporting as per Exhibit 4.06 Accounting and Fees. Concessionaire is responsible for all actions, liabilities and damages of partners, subcontractors or other entity(ies).
13. **Compliance Requirements.**
- A. The Concessionaire shall not discriminate against any employee or applicant for employment because of race, age, handicap, disability, color, religion, sex, sexual orientation or national origin. The Concessionaire shall comply with Title VI and Title VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1990, A.R.S. §41-1461 et. seq., A.R.S. §41-1492 et. seq., 29 U.S.C. §721 (Section 504), and Arizona Executive Order 75-5 which mandates that all persons shall have equal access to employment opportunities.
 - B. The Concessionaire agrees to comply with the I.R.C.A. and Arizona statutes, in the performance of this Agreement and, upon request, permit the County to inspect personnel records to verify such compliance.
 - C. The Concessionaire, for itself and all subcontractors, if any, warrants full compliance with all federal immigration laws and regulations that relate to their employees, and their compliance with A.R.S. §23-214 et seq. A breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. The County retains the right to inspect the papers of Concessionaire or sub-concessionaire's employee(s) who work on the Complex to ensure that the Concessionaire or sub-concessionaire is complying with the warranty provided above. The Concessionaire shall

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection. Nothing herein shall make any Concessionaire or sub-concessionaire an agent or employee of the County.

- D. The Concessionaire warrants that it is in compliance with verification of employment eligibility and E-Verify Program.
14. **Concessionaire's Representations.** Concessionaire represents and warrants to the County, which representations and warrants the County relies upon and the breach of which shall constitute a material breach under this Agreement, as follows:
- A. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, County shall have the right, as its exclusive remedy, to recover the full amount of such commission, percentage, brokerage or contingency fee.
 - B. This Agreement is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or partnership or formal business organization of any kind between the County and the Concessionaire and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
 - C. No person(s) supplied by the Concessionaire in the performance of obligations under the Agreement are considered to be the County's employees and no rights of the County's civil service, retirement, or personnel rules apply to such person(s).
 - D. The Concessionaire has total responsibility for determining employee eligibility, all salaries, wages, insurance or any type, bonuses, retirement withholdings, worker's compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the County harmless with respect thereto.
 - E. The Concessionaire will ensure full compliance with all applicable terms and conditions of this Agreement by its agents, employees and contractors (including sub-contractors of any tier) and their respective employees. Failure or refusal of the Concessionaire or its agents, employees, contractors, sub-contractors or their employees to comply with these terms and conditions will be deemed a breach of this Agreement.
 - F. The Concessionaire is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency.
 - G. The Concessionaire has not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - H. The Concessionaire is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (G) of this certification.
 - I. The Concessionaire has not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State or local) terminated for cause of default.

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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- J. The Concessionaire shall include, without modification, Sections 12 F through 12 I above in all lower tier covered transactions (i.e. transactions with vendors, contractors) and in all solicitations for lower tier covered transactions related to this Agreement.
- K. To the extent applicable under A.R.S. § 35-393.01, Concessionaire certifies it is not currently engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel as defined in A.R.S. § 35-393.

15. Representation and Warranties of County.

County represents and warrants to the Concessionaire that the following statements are true, correct and complete:

- A. All governmental actions required to be taken by the County to authorize execution of this Agreement by the County and performances by the County of its obligations hereunder have been taken and this Agreement is binding upon and enforceable against the County in accordance with its terms.
- B. To the best of the County’s knowledge, there are no lease agreements, maintenance contracts, service agreements or other contracts of any nature which pertain to, cover or affect the Complex except as disclosed in this Agreement.
- C. The Complex is being presented “as-is, where-is” as of the Effective Date of this Agreement. The County does not imply or provide any warranty with respect to the physical aspects of the Complex except as set forth herein.
- D. In the event of a breach of a representation or warranty as set forth herein, the Concessionaire shall notify the County of same and deliver to the County such information as is necessary to enable the County to remedy the breach. The Concessionaire shall cooperate with the County to remedy the breach.

16. Notices.

All notices required under this Agreement shall be in writing and given by United States Post Office certified mail, return receipt requested, or by commercial courier served with a receipt, or by hand delivery, to each Party’s following address, or to such other address as either Party may notify the other in writing as provided herein. Any such notice shall be considered served when communication is received and signed for or delivery is refused or returned to sender as unclaimed.

For the County:

Maricopa County Parks & Recreation Department
Attn: Contract Administrator
41835 N. Castle Hot Springs Road
Morristown, AZ 85342
Email: emilymiller@mail.maricopa.gov
Phone: (928) 501-9211

For the Concessionaire:

Email: _____
Phone: _____

17. General Provisions.

- A. The waiver by either Party of any breach of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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breach of said covenants, conditions or provisions of this Agreement. Any failure on the part of either Party to require or exact full and complete compliance with any of the covenants, conditions or provisions of the Agreement shall not be construed to, in any manner, change the terms hereof or preclude such Party from enforcing the full provisions of this Agreement.

- B. The paragraph or section headings used in this Agreement are for the purpose of convenience of reference only. They will not be construed in any manner, or to any extent, to limit or to extend the effect or meaning of the terms and provisions contained thereunder.
- C. The Parties intend for this Agreement to comply with applicable laws. If any provision of this Agreement is determined to be invalid, void, or illegal, then such determination shall not affect, impair, or invalidate any other provision hereof, and the remaining provisions shall remain in full force and effect and the Parties shall use their commercially reasonable efforts to restate the invalid provision to the end that it complies with applicable laws.
- D. Whenever a constant is referred to herein (e.g. “2017 Constant” or “measured in 2017 dollars”), the Consumer Price Index for the Metropolitan Area which includes the City of Phoenix published by the U.S. Bureau of Labor Statistics (or the nearest metropolitan area or a comparable index if that index is not published or no longer published) (the “Index”) shall be utilized to gauge the inflationary rate to be applied to determine the sum of money in the current dollars that is equivalent to the applicable amount of dollars circa 2017.
- E. The Parties agree to act in good faith and with fair dealing with one another in the execution, performance and implementation of the terms and provisions of this Agreement. Whenever the consent, approval or other action of a Party is required under any provision of this Agreement, such consent, approval or other action shall not be unreasonably withheld, delayed or conditioned by a Party unless the provision in question expressly authorizes such Party to withhold or deny consent or approval or decline to take action in accordance with a different standard, in which case the consent or approval or the decision to not take action may be withheld, delayed or conditioned in accordance with the different standard.
- F. Each of the Parties hereto shall execute and provide all additional documents and other assurances that are reasonably necessary to carry out and give effect to the intent of the Parties reflected in this Agreement.
- G. Except as may be otherwise expressly and specifically set forth in this Agreement, no person or entity shall be deemed a third party beneficiary of any of the provisions of this Agreement.
- H. The Concessionaire agrees to assist in the collection of data related to recreation uses occurring within the Complex. The County, or its designated representative, will provide the forms on which to collect the data. The Concessionaire will not be required to collect or release data to the County that violates any privacy statutes, regardless of originator, or is of a nature that identifies specific individuals as users of the Complex.
- I. There is reserved to the County and its successors or agents, the right of the officers, agents, employees, licensees, and permittees, or the designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting their rights and the terms and conditions described in and reserved by this Agreement, including the right of physical entry to the area for inspection, monitoring, or any other purpose consistent with any right or obligation of the County under any law or regulation, or for the purposes of surveying Park users and customers at the Complex. Right of entry must be coordinated with the Concessionaire to ensure safe entry and reasonable flow of business.

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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- J. The Concessionaire shall not commit or permit any illegal, morally questionable nuisance or unsafe condition to be created or maintained on the Complex. The Concessionaire shall not operate or knowingly permit the operation of any illegal acts upon the Complex.
- K. The Concessionaire hereby agrees and shall comply with all applicable federal, state, county and city statutes, laws, ordinances, rules, regulations and instructions, including MCPRD's rules and regulations (see **Exhibit 4.12 - Park Rules**), in effect now or as may be amended or added, which apply to the development, management, operation and maintenance of the Complex and to keep fully informed of, and in compliance with, any changes or revisions thereto. The Concessionaire shall also pay all taxes, assessments, fees and other expenses of any nature associated with the construction of facilities as well as improvement, management, operation and maintenance of the Complex.
- L. This Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed, interpreted and regulated by, the laws of the State of Arizona, and arbitration proceedings, if applicable, or suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto may be brought in the Superior Court of the State of Arizona, Maricopa County, and for this purpose each Party hereby expressly and irrevocably consents to the jurisdiction of said Court.
- M. If suit or action is commenced to enforce compliance with any term, covenant or condition of this Agreement, including any action undertaken in the context of bankruptcy proceedings, the Party not prevailing shall pay to the prevailing party a sum which the trial judge determines is reasonable as attorney fees to be allowed in the suit or action, and court costs, and if appeal is taken from any judgment or decree in the suit or action, the Party not prevailing on the appeal shall pay to the prevailing Party such further sum as the appellate court shall adjudge reasonable as attorney fees on appeal, and court costs.
- N. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- O. The occurrence of any of the following events shall excuse performance of such obligations of a Party as are rendered impossible or reasonably impracticable to perform while such continues: strikes; lockouts; acts of God; inability to get materials; governmental restrictions; enemy or hostile governmental action; fire or other casualty; and other causes beyond the reasonable control of the Party obligated to perform (all events of "Force Majeure").
- P. Each Party covenants and warrants to the other Party that: (a) it is duly authorized to execute this Agreement; and (b) the execution of this Agreement has been duly authorized by the applicable Party.
- Q. This Agreement is terminable only in accordance with the express and specific provisions herein. This Agreement does not create a leasehold estate and County shall at all times remain the title holder of the real property.
- R. The MCPRD Director is authorized to conduct required administrative actions as may be necessary to carry out the intent of the Agreement.
- S. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed, electronically transmitted and copied signatures are acceptable as original signatures.
- T. Time is of the essence of this Agreement. If the date for performance of any obligation hereunder or the last day of any time period provided herein shall fall on a Saturday, Sunday

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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or legal holiday, then said date for performance or time period shall expire on the first day thereafter which is not a Saturday, Sunday or legal holiday.

- U. This Agreement, together with any amendments attached hereto, constitutes the entire Agreement between the Parties and sets forth all of the covenants, promises, agreements, conditions or understandings, either oral or written, between the Concessionaire and the County, other than as set forth herein, and those agreements that are executed contemporaneously herewith. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by the Concessionaire and the County. The Concessionaire and the County have reviewed this Agreement and have had the opportunity to have it reviewed by legal counsel.

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EXHIBIT 4 - DRAFT COUNTY AGREEMENT
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DATED this _____ day of _____ 201____.

CONCESSIONAIRE

Signature Date

By: _____
Printed Name

Its: _____
Title

MARICOPA COUNTY

Chairman Board of Supervisors Date

ATTEST

Clerk of the Board Date

Approved as to Form:

Attorney for Maricopa County

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Exhibit 4.0 – Complex Site Plan and Legal Description
(Not to Scale, acreage indicated is approximate)

DRAFT

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Exhibit 4.01 - Complex Conceptual Site Plan per ITN Response

(Not to Scale, acreage indicated is approximate)

DRAFT

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Exhibit 4.02 - Legal Descriptions

(Concessionaire will furnish to MCPRD a full legal description of the property upon completion of construction.)

DRAFT

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Exhibit 4.03 - Complex Activities and Parameters

Exhibit 4.03 - Complex Activities and Parameters as stated herein, provides the overall scope of services. The Concessionaire will be authorized to provide full organization, administration, and supervision of **(INSERT SCOPE OF SERVICES TO BE PROVIDED)** as provided herein for Concessionaire's athletic program at the Complex.

DRAFT

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Exhibit 4.04 - Development, Improvements and Timeline

Exhibit 4.04 - Development, Improvements and Timelines as stated herein, provides the working document for the overall development and timelines pursuant to the terms of the Agreement.

DRAFT

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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Exhibit 4.05 - Planning, Permitting, Construction and Easements

Exhibit 4.05 - Planning, Permitting, Construction and Easements as stated herein, provides the working document for the overall planning, permitting, construction and easement pursuant to the terms of the Agreement.

It is the Concessionaire's sole responsibility to determine what permits and easements are required and comply with all applicable licensing, zoning, building codes and permitting requirements and to obtain all necessary governmental approvals. The Concessionaire acknowledges that it may be required to obtain licenses, permits or other approvals from government agencies other than Maricopa County. All plans for improvements and construction must be submitted to all appropriate permitting agencies with jurisdiction for approval in accordance with any applicable zoning, statutes, rules, codes or ordinances, air quality and other environmental requirements, regulations or mandates. The Concessionaire will be responsible for all costs associated with the planning, design, licensing, permitting, construction and completion of all stated requirements, improvements or mandates, unless otherwise stated in this Agreement. The Concessionaire is responsible for all costs associated with the permitting, installation, maintenance, repair and usage fees associated with telephone, fax, internet, fire alarms, security monitoring and other utilities and related infrastructures as may be applicable at the Complex or development thereof (reference **Exhibit 4.04 -Development, Improvements and Timeline**).

EXHIBIT 4 - DRAFT COUNTY AGREEMENT
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Exhibit 4.06 – Accounting and Fees

Exhibit 4.06 - Accounting and Fees as stated herein, provides the administrative procedures for payments of annual and minimum fees, payment of utilities, as well as requirements for maintenance and capital improvement reserve accounts for the Complex.

DRAFT

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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Exhibit 4.06– Accounting and Fees, Continued Appendix One – Fee Payment Schedule –

(DRAFT for Illustration Purposes Only,
Final Term and Final Fee Payment Schedule to be negotiated between Parties)

Contract Year	Period	Minimum Annual Fee Fee due each year on Contract Anniversary Date	Additional Fee Fee Due over Minimum Annual Fee
1	Contract Date- 12/31/2018	\$X	
2-5	1/1/2019 - 12/31/2022	\$X	If total revenue is greater or equal to \$X or less, then X%; or If total revenue is above \$X, then X%
6-10	1/1/2023 - 12/31/2026	\$X	If total revenue is greater or equal to \$X or less, then X%; or If total revenue is above \$X, then X%
11-14	1/1/2026 - 12/31/2030	\$X	If total revenue is greater or equal to \$X or less, then X%; or If total revenue is above \$X, then X%
15-19	1/1/2031 - 12/31/2035	\$X	If total revenue is greater or equal to \$X or less, then X%; or If total revenue is above \$X, then X%
20-25	1/1/2036 - 12/31/2040	\$X	If total revenue is greater or equal to \$X or less, then X%; or If total revenue is above \$X, then X%

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Exhibit 4.06– Accounting and Fees, Continued Appendix Two – Monthly Income and Attendance Statement

Venue No.	Venue Description	Gross Revenue	Month Attendance
1			
2			
3			
4			
5			
6			
7			
8			
9			
Total	Grand Total - All Venues		

Adjustments Allowed Per Exhibit 4.06 Accounting and Fees

OPERATING EXPENSES	AREA	Amount
Taxes		
MCPRD Merchandise		
CIP Fund		
TOTAL OPERATING EXPENSES		
Total Adjusted Gross Revenue		

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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Exhibit 4.07 - Administrative Functions

Exhibit 4.07 - Administrative Functions as stated herein, provides the working document for the daily administration parameters for the Complex. The Concessionaire shall provide all related administrative functions as stated herein and in the Agreement in a diligent, professional and creditable manner satisfactory to the County in compliance with all applicable statutes, laws, ordinances, rules and regulations.

DRAFT

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Exhibit 4.07 Administrative Functions, Continued Appendix One – Complex Annual On-Site Evaluation Template

Name of Complex: _____
Location: Paradise Valley Urban Park
Date of Evaluation: _____
Name of Concessionaire: _____
Concessionaire's Representative Present: _____

A. Complex General Areas:

1. Mowing:
2. Trees/vegetation appear healthy:
3. Efficiency of Irrigation:
4. Litter Control and Trash Removal:
5. Signs:

B. Buildings and Public Areas:

1. Restrooms kept clean and sanitary and stocked with tissue products:
2. Concession facilities kept clean, sanitary and environmental health services permit from Environmental Services Department posted:
3. Outside appearance of buildings and public areas are neat, clean and in good maintenance:
4. Inside appearance of buildings and public areas are neat, clean and in good maintenance:

C. Maintenance and Repair Facility

1. MSDS "Right-To-Know" Station in Place:
2. Manifests kept on all petroleum based products, tires, or batteries
3. OSHA notices posted:
4. Maintenance logs are kept:
5. Supplies and equipment are neatly stored

D. Complex Specific:

1. INSERT ITEMIZED CONCESSION SCOPE FOR EVALUATION

E. Customer Service

1. Copy of price sheet:
2. Copy of Business License:
4. Examples of customer comments about service, pricing, policies and quality (attach):
5. Example of a complaint that was received and how it was resolved:

F. Comments:

MCPRD On-Site Evaluation Certification:

Signature

Date

Printed Name and Title

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

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Exhibit 4.08 – Operations, Services, Maintenance and Capital Improvements

Exhibit 4.08 - Operations, Services, Maintenance and Capital Improvements as stated herein, provides the working document for the daily operation parameters pursuant to the terms of the Agreement. The Concessionaire shall provide services, operate, maintain, and improve the Complex in a commercially reasonable manner, and as stated herein and in the Agreement, in a diligent, professional and creditable manner satisfactory to the County in compliance with all applicable statutes, laws, ordinances, rules and regulations.

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Exhibit 4.09 - Safety

Exhibit 4.09 - Safety as stated herein, provides the working document for the safety parameters pursuant to the terms of the Agreement.

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Exhibit 4.10 - Resource Management

Exhibit 4.10 - Resource Management as stated herein, provides the working document for the resource management and environmental compliance parameters pursuant to the terms of this Agreement.

The Concessionaire is responsible for ensuring that adequate resource management and environmental practices are implemented through policies and procedures and adhered per this Agreement and as defined herein. The Concessionaire agrees to comply with all environmental laws and regulations and to take such other actions as may be reasonably required to protect against environmental liabilities.

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Exhibit 4.11 - Marketing and Media

Exhibit 4.11 - Marketing and Media, as stated herein, provides the working document for all of the marketing and media parameters pursuant to the terms of the Agreement.

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Exhibit 4.12 – Park Rules

**MARICOPA COUNTY PARKS AND RECREATION
PARK RULES**

*Adopted August 13, 2003 by the Maricopa County Board of Supervisors
Revised January 13, 2016 by the Maricopa County Board of Supervisors*

R-101 DEFINITIONS

The following definitions shall determine meanings for certain facilities, objects, entities or activities.

1. "Abandoned Vehicle" means any vehicle, boat, trailer, or structure, which shows evidence of being left unattended for a period of 48 hours unless displaying an official permit indicating a stay in excess of 48 hours.
2. "Aircraft" means a structure or device for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surface.
3. "Camping" means erecting a tent or shelter or arranging bedding, or both, for the purpose of, or in such a way as will permit, overnight use; or parking a trailer camper or other vehicle for the purpose of remaining overnight.
4. "Commission" means the Maricopa County Parks and Recreation Commission.
5. "County" means Maricopa County.
6. "Department" means the Maricopa County Parks and Recreation Department.
7. "Loudspeaker or public address system" means a device to amplify or direct sound.
8. "Maricopa County Park(s)" means any land or areas under the control of the Maricopa County Board of Supervisors which has been designated as a Park, Recreation Area or Conservation Area.
9. "Roads" means the entire width between the boundary lines of every way when any part thereof is open, kept or maintained for use by the public for purposes of vehicular travel.
10. "Special Use Permit" means commercial or non-commercial permits issued by the Department for activities outside a park's activity design or which excludes the general public or for which there is monetary gain.
11. "Swimming" means to propel one's self in water by natural means; consequently aquatic activities including the full or partial use of inner tubes, air mattresses or personal support devices.
12. "Designated Trail" means an authorized recreational trail designed, constructed, and maintained according to standards within the county manual; it is within Maricopa County Parks' boundaries and has been included in the Maricopa County Park trail system inventory.

R-102 SPECIAL USE PERMITS, FEES AND APPROVALS

1. Special Use Permits shall be required for eligible non-profit, government or private, as well as commercial uses.
2. For eligible non-profit uses, a Special Use Permit is required of any person or group for any activity outside each park's activity design, or for the use of specific park areas that require the exclusion of general public usage.
3. A Special Use Permit shall also be obtained in advance by any person or group wishing to use a Maricopa County Park for eligible commercial uses.
4. Park Impact Fees for Special Use Permits shall be negotiated by the Department based on the expenses related to the administration of the activity, protection of the park and visitors, and in accordance with established fee schedules when applicable.
5. The Department may require commercial applicants to enter into an agreement with the County for a negotiated percentage of gross receipts not to exceed twenty (20) percent.
6. The Department may require the permittee to post a deposit against damage and clean-up expense, provide a certificate of insurance naming the department as additionally insured, and/or provide for adequate medical, sanitary and security services.
7. A performance and payment bond may be required from any permittee who is providing a service that was solicited to provide any event or activity sponsored by the department.
8. The Department may impose conditions on the conduct of any activity, which are necessary to protect the area and maintain its availability as a public park.
9. A Special Use Permit is not required for any person operating under the provisions of a valid special use or commercial management concessions agreement with the department.
10. Special Use Permit applications, which are compatible with the management objectives of the individual park, may be refused for health and safety reasons or to protect the park from significant damages. With respect to competing non-profit uses, the use of park space shall be granted on a first-come, first-served basis. With respect to competing commercial uses, informal Proposals shall be solicited and the Special Use Permit awarded to that concessionaire which offers to provide the County with the highest potential revenue and/or best recreational value to park patrons, provided the concessionaire does not have a poor performance history on any prior permits.
11. All persons entering a park under a Special Use Permit are subject to all entrance and/or use fees, and all rules and regulations concerning park resource and facility use. The total amount of entrance fees owed by persons entering a park under a Special Use Permit, may be calculated in advance and paid in accordance with terms negotiated as part of the Special Use Permit.
12. A decision by the Department concerning any Special Use Permit may be appealed to the Commission.
13. Applications for Special Use Permits may be obtained from an authorized representative of the Department.

R-103 VIOLATIONS AND PENALTIES

1. Any person who violates any of these rules shall be guilty of a Class 2 misdemeanor.
2. Any person who violates any of these rules may also be evicted for failure to comply.

THE FOLLOWING ACTS ARE PROHIBITED IN MARICOPA COUNTY PARKS:

R-104 ENTRY, USE, OCCUPANCY, FEES

1. Entering, using, or occupying of a Maricopa County Park or its facilities, designated trails or waterways under the supervision and control of the Department for any purpose when said parks or areas are posted against such entrance, use, occupancy or where barriers exist.

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

**(Draft Agreement is included to illustrate type of provisions desired by the County.
Final terms of the Agreement will be determined based on negotiations of the Parties)**

2. Entering upon or using for any purpose, the land, water or facilities within the boundaries of Maricopa County Parks when a fee, rental, admission or other consideration has been established for such land, water or facilities, unless the person entering or using such land, water or facility has paid said fee, rental, admission or other consideration.

R-105 ANIMALS AND PETS

1. Riding, permitting or allowing livestock, saddle, pack, or draft animals except on designated trails or areas under special permit issued by the Department or by special provisions of a use management agreement.
2. Possessing, allowing or permitting a dog and/or other pets in a Maricopa County Park, unless the same shall be under immediate control on a leash not exceeding 6 feet in length, except the leash requirement shall not apply to dogs while being used in hunting, or in field trials, or while being trained, when upon lands open to such uses and it does not interfere with other park activities.
3. Possessing, allowing or permitting a dog in a Maricopa County Park without a current dog license.
4. Allowing dogs or other pets, other than seeing-eye or hearing guide dogs, within the confines of public park buildings.
5. Allowing dogs and/or other animals to create a nuisance, noise or disturbance in any area.
6. Failure of owners of pets to properly remove and dispose of any waste.
7. Scattering and/or depositing the ashes of any animal.

R-106 DISCHARGE OF FIREARMS, HUNTING AND TRAPPING

1. Except as provided by state law, discharging a firearm, shooting with bow and arrow, or setting traps except in locations provided for that purpose and as permitted by Arizona Game and Fish rules.

R-107 MOTOR VEHICLES AND BICYCLES

1. Operating any motorized vehicle except on roads and parking areas designated by the Department for such purpose.
2. Abandoning any vehicle in any area of a Maricopa County Park. Vehicles violating this section may be towed at the owner's expense.
3. Parking a motor vehicle or trailer or other device towed by a motor vehicle in such a manner whereby roads, parking areas or other traffic ways or traffic are blocked or otherwise impeded. Vehicles violating this section may be towed at the owner's expense if such violation constitutes blockage of any emergency lane or otherwise interferes with park operations.
4. Operating a bicycle in a careless or reckless manner, or in disregard of the safety of any person or property.
5. Utilizing bike ramps in non-designated areas.
6. Operating, without permission from the County, any motorized skateboard, motorized scooter, moped or like device.

R-108 WATERCRAFT AND SWIMMING

1. Bringing into, or operating any watercraft upon any body of water, except at such places and in such manner as designated for such use or purpose by the Department.
2. Storing or leaving any watercraft without first obtaining a permit issued by the Department or its authorized concessionaire.
3. Swimming in areas posted against such use.
4. Cliff jumping.

R-109 VANDALISM

1. Destroying, damaging, or removing any tree, shrub, wildflower, cactus, or any other vegetation, or any other vegetative product or by-products without first obtaining a written permit from the Department.
2. Destroying, damaging, defacing or removing any County property or property administered by the Department.

R-110 LITTERING

1. Depositing or abandoning garbage, sewage, refuse, trash, waste, or other obnoxious material, except in receptacles or containers provided for such purposes.
2. Throwing or breaking any glass, plastic or ceramic object leaving shards or other fragments on park property.

R-111 PUBLIC BEHAVIOR

1. Conducting one's self in a disorderly or intoxicated manner, or using threatening, abusive, or boisterous or insulting language, or conducting or participating in a disorderly assembly, or to solicit for any purpose.
2. Engaging in noisy conduct, operating generators or motors, operating radios, or otherwise making loud or disturbing noises that may disturb the peace of the area between the hours of 10:00 p.m. and 6:00 a.m.
3. Public urination or public defecation.
4. Engaging in noisy conduct that disturbs the peace.

R-112 CAMPING

1. Camping without first obtaining a written permit issued by the Department
2. Failure to obey all written or posted camping regulations.

R-113 FIRES

1. Building fires except in designated places.
2. Building fires in any area posted against such use.
3. Building wood or charcoal fires at any time posted against such activity (during fire ban).
4. Use of gas or propane stove or grills when use is prohibited (during extreme fire ban).
5. Abandoning any fire without completely extinguishing it.
6. Allowing a fire to escape from control.

R-114 PUBLIC OR COMMERCIAL ACTIVITIES

EXHIBIT 4 - DRAFT COUNTY AGREEMENT

**(Draft Agreement is included to illustrate type of provisions desired by the County.
Final terms of the Agreement will be determined based on negotiations of the Parties)**

1. Conducting any activity or assembly outside the individual park's activity design or requiring the use of park areas which exclude the use by the general public without first obtaining a Special Use Permit from the Department.
2. Posting, placing, or distributing advertising material; erecting a fence or barrier (except under specific use management or lease agreements), constructing or occupying improvements; or enclosing County administered lands without first obtaining a Special Use Permit from the Department.
3. Using a loudspeaker, or public address system, or amplifier without first obtaining a Special Use Permit from the Department.
4. Using County administered lands for a commercial purpose without first obtaining a Special Use Permit or use management or lease agreement from the Department.

R-115 GLASS BOTTLES

1. Possessing glass, ceramic or hard frangible plastic beverage bottles.

R-116 AIRCRAFT AND ENGINE POWERED MODELS

1. Operating any passenger carrying aircraft of any nature or parachute, including parasailing, except in areas designated for such use by the Department or in an emergency situation.
2. Operating engine powered models and/or toys in any park area not designated for such use or in such a manner that it could be a hazard to the public.

R-117 INTERFERENCE WITH A PARK RANGER OR A PARK POLICE OFFICER

1. Interfering with any Park Ranger and/or Park Police Officer in the discharge of the Park Ranger's and/or Park Police Officer's duties.
2. Failing or refusing to obey any lawful command of any Park Ranger and/or Park Police Officer or other Certified Peace Officer.

R-118 TRAILS

1. Damaging, blocking, restricting or otherwise interfering with the use of a trail.
2. Throwing or rolling rocks or other items into valleys or canyons, down hillsides, mountainsides or trails.
3. Leaving a designated trail or walkway between trailheads.
4. Operating a bicycle, riding a horse, or hiking, except on trails designated for that use.
5. Failure to follow any sign that dictates the use or behavior on a trail.