CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: ~~3/27/2014~~ 4/10/2014

Action Requested By:
Recreation Services

Agenda Item Type
Resolution

Subject Matter:

Agreement between the City of Huntsville and Academy, Ltd. dba Academy Sports + Outdoors.

Exact Wording for the Agenda:

Agreement between the City of Huntsville and Academy, Ltd. dba Academy Sports + Outdoors.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Allow for sponsorship of the Wally Vess Youth Fishing Rodeo.

Associated Cost: Not applicable

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Greg Patterson

Date: 3/14/2014

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Recreation Services** Council Meeting Date: ~~3/27/2014~~ 4/10/14

Department Contact: **Karen Lang** Phone # **256-564-8024**

Contract or Agreement: **Agreement between the City of Huntsville and Academy, Ltd.**

Document Name: **Agreement between the City of Huntsville and Academy, Ltd.**

City Obligation Amount: **$0.00**

Total Project Budget: **$0.00**

Uncommitted Account Balance: **$0.00**

Account Number: **N/A**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating	Greg Patterson	MAR 14 2014
2) Legal	Mary C. Cates	3-24-2014
3) Finance	[illegible]	3/24
4) Originating	Greg Patterson	APR 02 2014
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RECEIVED MAR 25 2014

RESOLUTION NO. 14-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, and Academy, Ltd., dba Academy Sports + Outdoors (hereinafter referred to as the "Academy") which said agreement is substantially in words similar to that certain document attached hereto and identified as "Agreement between the City of Huntsville and Academy, Ltd., dba Academy Sports + Outdoors", consisting of three (3) pages and the date of April 10 , 2014, appearing on the margin of the first page, together with the signature of the President or President Pro-Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 10th day of April, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of April, 2014.

Mayor of the City of Huntsville

This Sponsorship Summary ("Summary"), naming Academy Sports + Outdoors ("Academy") as a Sponsor of the **Huntsville Parks & Recreation "Wally Vess Kid's Fishing Rodeo"** ("Recipient"), is governed by that certain Sponsorship Rider ("Rider") between Academy and Vendor executed on May 1, 2014 ("Effective Date").

The term of this Summary is for the period of time from the Effective Date until **June 8, 2014.** Academy shall have the right of first refusal to extend this Agreement for optional additional one (1) year periods. Academy must notify Recipient of its intent to renew the Agreement with written notice to Recipient 30 days prior to the end of the term.

Academy will provide the following to Recipient:

- $600 in Gift Cards
  - One (1) $500 Gift Card
  - Five (5) $20 Gift Cards
- Twenty (20) Academy Sports & Outdoors Buckets
- Ten (10) Cases of Academy Bottled Water ($60 Value)
- 4' x 10' banner (To be returned after event)

Academy will receive the following sponsorship benefits from Recipient:

- Banner prominently displayed at the event
- Logo prominently place on all promotional print materials
- PA announcements during the event and at the awards ceremony recognizing Academy as a sponsor
- One (1) in-store registration held at the store
  - Dates to be mutually agreed upon
  - Academy will provide table and chairs
- Huntsville Parks and Recreation to provide proof of performance to Academy to include attendance numbers, pictures of promotions and elements set forth in this agreement

Invoicing:

- Recipient shall submit invoice for payment processing via email to: **promotionsinvoices@academy.com**

_____
President, Huntsville City Council

Date: _____

Academy SPORTS+OUTDOORS

SPONSORSHIP RIDER

SA Version 02.26.13 Febuary 2013

This **SPONSORSHIP RIDER ("Rider")** is entered into on **May 1, 2014** (the "Effective Date") between **Academy, Ltd., d/b/a Academy Sports + Outdoors ("Academy")**, a Texas limited partnership located at 1800 North Mason Road, Katy, Texas 77449 and **Huntsville Parks & Recreation "Wally Vess Kid's Fishing Rodeo"** ("Recipient"), a **municipality** located at **2411 Ninth Avenue Huntsville, Alabama 35805**. Academy and Recipient may sometimes be referenced herein individually as "Party" or collectively as the "Parties". This Addendum is made part of the Sponsorship Summary ("Summary") by and between Academy Ltd. d/b/a Academy Sports + Outdoors ("Academy") and Recipient dated **May 1, 2014**. This Rider, agreed to by both parties, modifies the terms and conditions of the Summary. Should any conflict arise between the Summary and this Rider, this Rider shall control and supersede all prior agreements and understandings, with respect to the subject matter hereof. Academy and Recipient agree that the following provisions shall be included as a part of the sponsorship agreement (Agreement").

1. **Pricing And Invoicing**
   Nothing herein shall permit an increase in the price for promotional or sponsorship rights or consideration specified in any Summary unless approved in writing and signed by Academy. All invoices will be paid within 45 days after receipt of a valid and correct invoice. Academy shall have the right at any time to set-off any amount owed by Recipient to Academy under this Rider or any other agreements between the Parties from and against any amount due and owing by Academy to Recipient under this Rider.

2. **Insurance.** The Parties understand and agree that the City of Huntsville's insurance requirements under this agreement are satisfied by the City of Huntsville being self-insured.

3. **Representations, Warranties and Guarantees.** Each Party warrants, represents, and guarantees to the other that:
   a. The party (i) understands all of the terms of this Rider; (ii) has had the opportunity to review this Rider with its counsel; (iii) has the full power and authority to enter and perform this Rider; (iv) has completed all necessary action to duly authorize the execution, delivery and performance of this Rider; and (v) confirms that this Rider has been duly executed and delivered on behalf of Recipient and is the valid and binding obligation of Recipient;
   b. The Party shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, requirements, decrees, orders, judgments, injunctions, and all other government and/or regulatory directives (collectively, "Laws") at all times during the Term of this Rider; and
   c. All services, consideration, or materials provided pursuant to the Rider do not infringe any actual or alleged patent, design, trade name, trademark, copyright, intellectual property right, trade secret, or any other intellectual property right or entitlement of any third party.

4. **MARKS.** Except for the limited license, if any, granted under this Rider or any Summary for the use of copyrights, service marks, logos, trademarks, word marks, symbols, emblems, designs, patents, or other intellectual property (collectively "Marks"), each Party's Marks under trademark or copyright law or other property rights shall inure to the benefit of and be the exclusive property of the Party owning such Marks. Except as set forth herein, neither Party may use the other Party's Marks without prior written consent. Each Party agrees that nothing in this Rider shall give one Party any right, title or interest in the other Party's Marks and nothing contained herein shall be construed as an assignment or grant from one Party to the other of any right, title or interest in or to the other Party's Marks.

5. **INDEMNIFICATION. EXCEPT TO THE EXTENT PROHIBITED BY LAW, RECIPIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS ACADEMY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL ALLEGATIONS, CLAIMS, LAWSUITS, JUDGMENTS, LOSSES, CIVIL PENALTIES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS (EACH A "CLAIM"), ARISING OUT OF OR RELATED TO (A) ANY INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY ANY ACT OR OMISSION OF RECIPIENT OR RELATED TO A PROMOTIONAL EVENT UNDER THIS RIDER; (B) ANY NEGLIGENT OR GROSSLY NEGLIGENT ACTION, INACTION, OMISSION OR INTENTIONAL MISCONDUCT OF RECIPIENT IN ITS PERFORMANCE OF THIS RIDER; (C) RECIPIENT'S BREACH OF ANY REPRESENTATION, WARRANTY, TERM, COVENANT, OR OTHER OBLIGATION UNDER THIS RIDER, INCLUDING COMPLIANCE WITH ALL LAWS; AND/OR (D) ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS BY ANY PRODUCT OR SERVICE DELIVERED PURSUANT TO THIS RIDER.**

6. **LIMITATIONS AND WAIVERS**
   6.1 **DAMAGE LIMITATIONS. REGARDLESS OF THE LEGAL OR EQUITABLE BASIS OF ANY CLAIM IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS**

RIDER, OR ANY OTHER DAMAGES (EXCEPT DIRECT DAMAGES), INCLUDING WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF REVENUES OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR THE ALLEGED BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 LIMITATION OF LIABILITY. EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS RIDER, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID OR INCURRED BY ACADEMY TO RECIPIENT UNDER THIS RIDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH ACTION, THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION IS CUMULATIVE WITH ALL OF ACADEMY'S EXPENDITURES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THIS LIMITATION. THE PARTIES ACKNOWLEDGE THAT EACH OF THE RELIED UPON THE INCLUSION OF THIS LIMITATION IN CONSIDERATION FOR ENTERING INTO THIS RIDER. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO THE INDEMNITY OBLIGATIONS THAT EACH PARTY MAY OWE TO THE OTHER UNDER THIS RIDER.

7. **ASSIGNMENT.** Either Party may assign this Rider to a present or future parent, subsidiary, or affiliated entity, including a future successor or party acquiring all or part of the Party's business. All other assignments, transfers, or delegations require written consent of both Parties. Any attempted assignment or transfer in contravention of this Section shall be void.

8. **ENTIRE AGREEMENT/CHANGES.** This Rider constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, understandings, negotiations, representations or proposals or any kind, whether written, oral or otherwise. Neither Party has relied upon any statements, representations or other communications that are not contained in this Rider. This Rider may not be modified or amended except in writing executed by the duly authorized representatives of each Party to this Rider.

9. **RELATIONSHIP OF THE PARTIES.** The relationship of Academy and Recipient under this Rider shall be that of independent contractors and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, agency, partnership, exclusivity, or any other relationship other than that of independent contractors. Academy and Recipient acknowledge and agree that each is engaged in a separate and independent business and neither shall state, represent, or imply any interest in or control over the business of the other.

10. **CHOICE OF LAW AND FORUM. THE LAWS OF THE STATE OF ALABAMA GOVERN THIS RIDER AND ANY DISPUTES RELATED TO THIS RIDER WITHOUT REFERENCE TO PRINCIPLES OF CHOICE OR CONFLICTS OF LAW. EXCEPT WHERE INJUNCTIVE OR OTHER EQUITABLE RELIEF IS SOUGHT, THE PARTIES AGREE THAT, AS A CONDITION PRECEDENT TO ANY ACTION REGARDING DISPUTES ARISING UNDER THIS RIDER, SUCH DISPUTES SHALL FIRST BE SUBMITTED TO MEDIATION BEFORE A PROFESSIONAL MEDIATOR SELECTED BY THE PARTIES, AT A MUTUALLY AGREED TIME AND PLACE, AND WITH THE MEDIATOR'S FEES SPLIT EQUALLY BETWEEN THE PARTIES.**

IN WITNESS WHEREOF, the Parties hereto have executed this Rider as of the latest date written below.

ACADEMY	**RECIPIENT**
ACADEMY, LTD., d/b/a ACADEMY SPORTS + OUTDOORS By: ACADEMY MANAGING CO., L.L.C. It's General Partner	**Huntsville Parks & Recreation**
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____