



THIRD AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF CHANDLER AND
CHANDLER AMUSEMENTS, LLC

THIS THIRD AMENDMENT TO MEMORANDUM OF AGREEMENT (the "Amendment") is made and entered into the ____ day of _____, 2021, by and between the City of Chandler, an Arizona municipal corporation ("City"), and Chandler Amusements, LLC, an Arizona limited liability company ("Contractor").

RECITALS

- A. City and Contractor's predecessor, Encanto Amusements LTD, entered into a Memorandum of Agreement ("Agreement") dated May 12, 2004, whereby Encanto Amusements would provide services for amusement ride and concession services at City's Desert Breeze Park.
- B. In a first amendment to the Agreement dated September 3, 2004, City agreed to the transfer and assignment of all interest and obligations of the Agreement to Contractor.
- C. In a second amendment to the Agreement dated July 25, 2014, City and Contractor agreed to extend the term of the Agreement for an additional ten years, until August 15, 2024.
- D. In order to ensure continuity of amusement and concession services at Desert Breeze Park into the future, the parties wish to extend the Agreement for an additional seven years, until August 31, 2031, as well as amend other terms of the Agreement as described in this Amendment.

AGREEMENT

- 1. Extension of Agreement Term. The Agreement is amended to extend the term until August 31, 2031.
- 2. Insurance. The Agreement is amended to add the following requirements:
 - A. General Insurance Requirements.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor must purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an A.M. Best, Inc. rating of A-7 or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
 2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
 3. Contractor and subcontractors must procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors.
 4. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under this Agreement by Contractor, its agents, representatives, employees, or subcontractors, and Contractor is free to purchase additional insurance.
- B. Minimum Scope and Limits of Insurance. Contractor must provide coverage with limits of liability not less than those stated in this Agreement below.
1. Commercial General Liability – Occurrence Form
 - a. The policy must include bodily injury, property damage, personal injury, and broad form contractual liability coverage.
- | | |
|---|-------------|
| General Aggregate | \$4,000,000 |
| Products - Completed Operations Aggregate | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |

Blanket Contractual Liability --	
Written and Oral	\$1,000,000
Fire Legal Liability	\$50,000
Each Occurrence	\$2,000,000

The policy must be endorsed to include the City of Chandler and its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

The policy must contain a waiver of subrogation against the City of Chandler and its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees for losses arising from work performed by or on behalf of Contractor.

2. Business Automobile Liability

The policy must include coverage for bodily injury and property damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy must be endorsed to include the City of Chandler and its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor involving automobiles owned, leased, hired, or borrowed by Contractor.

The Policy must contain a waiver of subrogation against the City and its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees for losses arising from work performed by or on behalf of Contractor.

3. Worker's Compensation and Employers' Liability

The policy must include workers' compensation statutory employers' liability coverage.

Each Accident	\$ 500,000
Disease -- Each Employee	\$ 500,000
Disease -- Policy Limit	\$1,000,000

The Policy must contain a waiver of subrogation against the City of Chandler and its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees for losses arising from work performed by or on behalf of Contractor.

- C. Contractor's Coverage is Primary. Contractor's insurance coverage will be primary insurance with respect to all other available sources. Coverage provided by Contractor may not be limited to the liability assumed under the indemnification provisions of this Agreement.
- D. Notice of Cancellation. Each insurance policy required by this Agreement must provide the required coverage and may not be suspended, voided, canceled, or reduced. Contractor must provide the City with prompt notice if the insurance is suspended, voided, cancelled, or reduced. Such notice must be sent directly to the City's procurement division.
- E. Sexual Abuse and Molestation Coverage. During the Term of the Agreement, Contractor shall show evidence that claims for sexual abuse and molestation are not excluded.
- F. Acceptability of Insurers. Insurance must be obtained from duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum-insurer rating is sufficient to protect Contractor from potential insurer insolvency.
- G. Verification of Coverage. Contractor will furnish the City with a declarations page for each policy, as well as any amendments or riders in order to verify contractual insurance requirements are being satisfied.

All certificates and endorsements are to be received and approved by the City's procurement division before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Agreement must be sent directly to the City's procurement division. The City project/contract number, if applicable, and project description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

- H. Approval. Any modification or variation from the *insurance requirements* in this Agreement will be made by the City, whose decision is final. Such action

will not require a formal Agreement amendment but may be made by administrative action.

3. License. The Agreement is amended to clarify that the nature of the Agreement is that of a license, whereby City has given Contractor a license to operate an amusement and concessions business on City property. The parties agree that the Agreement is not a lease, and any references to "rent" payments in the Agreement should be interpreted as being license payments.

4. Revenue Share License Payment. The Agreement is amended to remove Section H ("Rent Payment Procedures") of the Technical Specifications entirely and replace it with the following:

H. Revenue Share License Payment. For the privilege of operating the amusement and concessions business on City property, Contractor shall pay a percentage of Contractor's monthly gross income to City as a license payment. Payments are due no later than thirty days after the last day of each month for which the monthly license payment amount is calculated. Beginning on the effective date of the Agreement until August 2024, Contractor shall pay City a license payment of eight percent (8%) of Contractor's monthly gross income. Beginning September 2024 and through the remainder of the Term, Contractor shall pay City a license payment of nine percent (9%) of Contractor's monthly gross income.

All license payments must be made to the City of Chandler and mailed to the Chandler Community Services Department, Attn: Community Services Director, P.O. Box 4008 Stop 501, Chandler, Arizona 85244. The place of payment may be changed at any time by City upon thirty days written notice to Contractor. Mailed license payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. Contractor assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

5. Notice of Policies and Hours of Operation. The Agreement is amended to add the following paragraph to the Technical Specifications:

Q. Contractor must post information related to policies and hours of operation both on-site and online. Contractor must communicate in advance to the public via online and electronic means any daily change in operation schedule or cancellation of operations.

6. Termination by City. Notwithstanding anything in the Agreement to the contrary, the Agreement is amended to clarify that City may not terminate solely for convenience. Any termination by City must be for good cause only, meaning Contractor is in default of the Agreement or has otherwise failed to provide the services in a manner consistent with the

requirements of the Agreement. Contractor shall have an opportunity to cure any default according to the provisions of the Agreement before City may terminate.

7. No Performance Bond. The Agreement is amended to remove the requirement for Contractor to provide a performance bond.

8. Definitions. All capitalized terms not otherwise defined in this Amendment have the meanings as set forth in the Agreement.

9. Reaffirmation. Unless modified by the terms of this Amendment, the Agreement is hereby reaffirmed, including all "Contract Documents" referenced in Section III of the Agreement.

10. Interpretation. If there are any inconsistencies or conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will govern.

IN WITNESS WHEREOF, City and Contractor execute this Amendment on the date first listed above.

CITY OF CHANDLER:

By: _____
Mayor

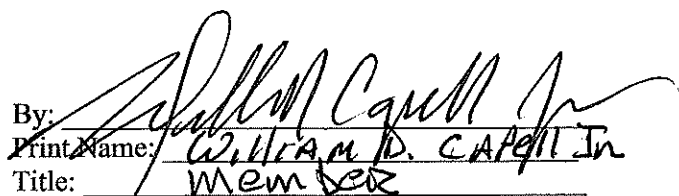
ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY TA

CHANDLER AMUSEMENTS, LLC:

By: 
Print Name: William D. Capell Jr.
Title: Member