



BUTLER AMUSEMENTS, INC.

CLEANEST SHOW IN THE WEST

CONTRACT AND AGREEMENT

THIS AGREEMENT, made and entered onto this 28th day of May, 2024, by and between

BUTLER AMUSEMENTS, INC., hereinafter termed “FIRST PARTY”, and THE CITY OF EL MIRAGE, ARIZONA hereinafter termed “SECOND PARTY”.

WHEREAS, First Party is engaged in the business of producing shows, exhibitions, entertainment and amusement devices and desires that Second Party shall sponsor First Party and make suitable arrangements for First Party’s operations in or near the city of EL MIRAGE, ARIZONA.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Second Party agrees to sponsor First Party for a period commencing March 20, 2025 to and including March 23, 2025. It is also understood that the Second Party will arrange to have access to grounds for setup from March 17, 2025 to March 19, 2025 and for teardown Monday, March 24, 2025. Second Party agrees to furnish a suitable location and exhibition site located at “Gentry Park” located at or about 14010 El Mirage Road in the City of El Mirage, Arizona.
2. Second Party shall waive any fees for all permits and licenses which First Party may be required to obtain for any and all of its operations in connection with the exhibition sponsored by Second Party.
3. First Party, agrees to pay to Second Party as follows: Advance Sale: 20% of the gross sales.
On Site Sales:
15% of the first \$20,000, 20% of the next \$20,000 and 25% thereafter of the gross ride sales. **PLUS** \$20 for each food and game concession operated by the First Party collectively "Payment to Second Party" vs. a rental fee of \$5,000, whichever is greater. Plus First Party will be required to provide Second Party with a \$1,000 refundable security deposit.
4. In keeping with its title “Cleanest Show in the West,” First Party agrees to clean the portion of the grounds utilized by the First Party during the showing engagement and to leave said grounds clean at the conclusion of said agreement.
5. First Party shall have exclusive control of the operation of all shows, riding devices and concessions; the feature and character of which shall be satisfactory to Second Party.
6. Second Party agrees that it will not sponsor or book directly or indirectly any other show, amusement or attraction of a similar nature to First Party’s operations at anytime prior to the date of the exhibition provided herein.
7. If First Party is prevented from exhibiting or operating any of its shows or attractions by Act of God, riot, strike, fire, war, lockout or blackout, or if by any law or act of the United States or the State of Arizona, or any political subdivision thereof, now, or hereafter to be passed or adopted, or if by any order or command of any of the Military or Naval Forces of the United States or said State, the regular ordinary course of business of First Party is curtailed, suspended, interrupted or interfered with and said party thereby prevented from carrying on its usual course of business in whole or part, then this Agreement, at the option of either party, shall become null and void and each party released therefrom and any deposit given by First Party to Second Party guaranteeing the faithful performance of any of the terms and provisions hereof shall forthwith be refunded and repaid to First Party.
8. All contracts must be verified and agreed by the City Manager of the City of El Mirage, Arizona and the Director or Officer for Butler Amusements, Inc.

9. All prior negotiations are merged into this agreement and same shall not be modified except in writing, signed by the manager of the First Party authorized thereto.

10. **Independent Contractor Status**

It is expressly understood and agreed by both parties that First Party, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and a not an agent of the Second Party. As an independent contractor, First Party is responsible for controlling the means and methods to complete the scope of work described in this agreement. First Party expressly warrants not to represent, at any time or in any manner, that First Party is an agent of the Second Party.

11. **Advice and Status Reporting**

First Party shall provide the Second Party with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to Second party such information as is necessary to enable Second Party to monitor the performance of this agreement.

12. **Assignment of Personnel**

First Party shall assign only competent personnel to perform services pursuant to this agreement. If Second Party asks First Party to remove a person assigned to the work called for under this agreement, First Party agrees to do so immediately, without requiring the City to process a reason or explanation for this request.

13. **Assignment and Subcontracting**

It is recognized by the parties hereto that a substantial inducement to Second Party for entering into this agreement was, and is, the professional reputation and competence of First Party. Neither this agreement nor any interest therein may be assigned by First Party without the prior written approval of Second Party's authorized representative. First Party shall not subcontract any portion of the performance contemplated and provided for herein, without prior written approval of the Second Party's authorized representative.

14. **Insurance**

On or before beginning any of the services or work called for by any term of this agreement, First Party, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the Second Party the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the Second Party. First Party shall not allow any subcontractor to commence work on any subcontract until all insurance required of the First Party has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this agreement prior to execution.

- (a) **Workers' Compensation.** First Party shall, at First Party's sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by First Party. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars. In the alternative, First Party may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the Arizona Labor Code. The insurer, if insurance is provided, or the First Party, if a program of self-insurance is provided, shall waive all rights of subrogation against the Second Party for loss arising from work performed under this agreement.
- (b) **Commercial General and Automobile Liability Insurance.** First Party, at First Party's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than:
 - I. Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit and

II. Commercial General Liability Insurance with limits of not less than \$5,000,000 per occurrence and not less than \$10,000,000 in the aggregate. The aggregate limits for such Commercial General Liability Insurance may be provided via primary coverage or in a combination of primary and umbrella/excess coverage. Second Party shall require Operator to provide endorsements to such Commercial General Liability Insurance.

If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001(ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001(ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) Second Party, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of First Party, including the insider's general supervision of First Party; products and completed operations of First Party; premises owned, occupied or used by First Party. The coverage shall contain no special limitations on the scope of protection afforded to Second Party, its officers, employees, agents, or volunteers.
 - (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
 - (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the Second Party will be called upon to contribute to a loss under the coverage.
 - (iv) Any failure of First Party to comply with reporting provisions of the policy shall not affect coverage provided to Second Party and its officers, employees, agents and volunteers.
 - (v) Insurance is to be placed with Arizona-admitted insurers with a Best's rating of no less than A:-VII.
 - (vi) Notice of cancellation or non-renewal must be received by Second Party at least thirty days prior to such change.
- (c) Deductibles and Self-Insured Retentions. First Party shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement, upon express written authorization of the Second Party's authorized representative, First Party may increase such deductibles or self-insured retentions with respect to Second Party, its officers, employees, agents, and volunteers.
- (d) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (c), or (d) of this section of the agreement is reduced, limited, or materially affected in any other manner, First Party shall provide written notice to Second Party at First Party's earliest possible opportunity and in no case later than five days after Second Party is notified of the change in coverage.
- (e) In addition to any other remedies Second Party may have if First Party fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, First Party may, at its sole option:

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order First Party to stop work under this agreement or withhold any payment which becomes due to First Party hereunder, or both stop work and withhold any payment, until First Party demonstrates compliance with the requirements hereof;
- (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies Second Party may have and is not the exclusive remedy for First Party's breach.

15. **Indemnification-First Party's Responsibility**

As to the First Party's work hereunder it is understood and agreed that (a) First Party has the professional skills necessary to perform the work, (b) Second Party relies upon the professional skills of First Party to perform the work in a skillful and professional manner, and (c) First Party thus agrees to so perform.

Acceptance by Second Party of the work performed under this agreement does not operate as a release of said First Party from such professional responsibility for the work performed. It is further understood and agreed that First Party is apprised of the scope of the work to be performed under this agreement and First Party agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to First Party's profession.

First Party shall indemnify, defend, and hold Second Party, its officers, employees, agents, and volunteers harmless from and against all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by willful misconduct or negligent acts or omissions of First Party, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the Second Party, its officers, employees, agents, or volunteers. Acceptance of insurance certificates and endorsements required under this agreement does not relieve First Party from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. **Licenses**

If a license of any kind, which term is intended to include evidence of registration, is required of First Party, its employees, agents, or subcontractors by federal or state law, First Party warrants that such license has been obtained, is valid and in good standing, and First Party shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

17. **Business Licenses**

If applicable, First Party shall obtain and maintain a City of El Mirage Business License until all agreement services are rendered and accepted by the Second Party.

18. If applicable, First Party must abide by all conditions set forth by the City of El Mirage's Temporary Use Permit (TUP) for the Special Event Permit. If any one of those conditions of approval set forth by the TUP is not fully satisfied, Second Party may deem First Party in breach of this agreement.

19. This contract and agreement is not valid unless all copies are signed by both parties and one copy returned to the First Party by October 1, 2024.

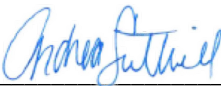
20. The cost for providing the following services to operate the carnival will be born in full by the First Party:

- a. Carnival Security (private)
- b. Portable toilet and wash stations

- c. Garbage and recycling dumpsters and disposal
- d. Diesel fuel & generators as needed for operation of carnival

Executed in duplicate the day and year first herein above written.

BUTLER AMUSEMENTS, INC

BY 
Andrea Stillwell, Director
FIRST PARTY

Date: 6/25/24

CITY OF EL MIRAGE, ARIZONA

BY _____
J. Crystal Dyches, City Manager
SECOND PARTY

Date: _____

APPROVED AS TO FORM

By: _____

Justin Pierce, City Attorney

Date: _____