

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-28

A RESOLUTION APPROVING AND RATIFYING AN
EVENT PROPOSAL WITH CITY OF FUN CARNIVAL, INC.
(2015 BUTLERVILLE DAYS)

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 12 May 2015 to consider, among other things, approving an “Event Proposal” (the “*Agreement*”) with City of Fun Carnival, Inc. (“*Provider*”) whereunder Provider would provide and operate a “midway” (consisting of rides, games and food booths) in connection with the City’s “Butlerville Days” community event on or about 24 July 2015; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2015-28, shall take effect immediately upon passage.

PASSED AND APPROVED effective 12 May 2015.

COTTONWOOD HEIGHTS CITY COUNCIL



ATTEST:

Kory Solorio
Kory Solorio, Recorder

By Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 12th day of May 2015.

RECORDED this 12 day of May 2015.

Event Proposal

THIS EVENT PROPOSAL (this "*Agreement*") is entered into effective 12 May 2015 between **CITY OF FUN CARNIVAL, INC.**, a Utah corporation whose address is 532 East 1100 North, Pleasant Grove, UT 84062 ("*Contractor*"), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*").

Section 1. **Background.** City has scheduled its annual "Butlerville Days" community event (the "*Event*") for 23-24 July 2015 on the public property surrounding the Cottonwood Heights Recreation Center near 2700 East 7500 South in the City (the "*Event Site*"). As part of the Event, City desires to provide recreational opportunities to Event participants in the form of family-type rides, games and other activities. Contractor is in the business of providing one such service, and has proposed to provide (as specified in this Agreement) all necessary or advisable equipment, facilities, supervision, etc. for a "midway" (the "*Midway*") in connection with the Event. The Midway involves the provision of carnival-type rides and games, as well as booths for the sale of food items, as further described below. The Midway activities offered by Contractor are generally described on Contractor's website at cityoffuncarnival.com.

Section 2. **Midway.** Contractor shall perform for City the following described services (the "*Services*") throughout the Event:

(a) **Activities.** Contractor shall provide and operate the following activities (the "*Activities*") for the Midway:

(i) **Rides.** 18-20 carnival-type rides ("*Rides*") appropriate for adults and for children in attractive, clean and safe working condition. All Rides shall comply with all applicable legal requirements and industry "best practices" standards, and shall be safety-inspected before, and at any recommended intervals during, their use hereunder. All Rides shall be continuously operated and supervised by qualified employees of Contractor. Charges for participation on the Rides shall be as shown on the attached exhibit (the "*Exhibit*").

(ii) **Games.** Ten carnival-type games ("*Games*") appropriate for adults and for children, continuously operated and supervised by qualified employees of Contractor. Charges for participation in the Games shall be as shown on the Exhibit.

(iii) **Food.** Five food booths ("*Booths*"), continuously operated and supervised by qualified employees of Contractor. Contractor shall have the exclusive right to sell cotton candy, candied apples and deep fried "corndogs" at the Event Site during the Event. The food items prepared and sold by Contractor shall be prepared in accordance with all applicable legal and food industry standards, including the requirements of the Salt Lake County Health Department (the "*Health Department*") and all applicable "safe food handling" standards. Food sales shall operate only from Contractor's City-approved Booths on the spaces assigned to Contractor. Walking through the audience to sell food or any other items is prohibited. Beverages may not be sold or served in cans or glass containers.

Contractor shall sell only the food items specified on the Exhibit for the prices shown on the Exhibit. If City obtains a sponsorship from a soft-drink company, such as Coca-Cola, which requires City to limit soft drink offerings at the Movie (defined below) and/or the Event to soft drinks manufactured by such sponsor, then City will so inform Contractor by 27 May 2015. If City so acts, then Contractor may by 5:00 p.m. on 29 May 2015 terminate this Agreement; provided that if Contractor fails to so terminate, then Contractor's soft drink offerings at the Movie and the Event shall conform to the requirements of such sponsorship.

Contractor's Booths shall comply with the following minimum requirements. Failure to meet such

requirements may result in Contractor being prohibited from conducting business from the Booth until full compliance occurs:

(A) A roof, awning or other covering, impermeable to weather, over the entire food preparation, service, clean-up and storage area;

(B) Two side walls (not screening) which will reduce the entry of dust and dirt, and exclude non-authorized persons;

(C) The front service wall shall be a counter, half-wall, or table draped to the floor. The back wall may be open for employee access, or solid if desired;

(D) The floor must be plywood laid over the grass field of the host park, with Contractor supplying the plywood flooring for its Booth;

(E) All cooking equipment utilized at the Booth must be at least four feet from the public by roping off or other means for safety reasons, FDA/DFP Guide (Conference for Food Protections);

(F) All open flame cooking devices must meet City's fire code requirements; and

(G) Each Booth must be equipped with a hand wash station. Hand wash stations in restrooms do not qualify. At minimum, there must be flowing water from a container with a handled spigot (which spigot must stay open on its own so the person who is washing his hands has both hands free for washing), a catch basin or bucket, liquid hand soap, and paper towels. **BOOTHS WITHOUT HAND WASH STATIONS WILL BE GROUNDS FOR IMMEDIATE CLOSURE.**

(H) Only people working in a Booth will be allowed in the Booth. All others must remain in front of the Booth.

(iv) Possible Closure During Movie. Operation of the Activities during the City's outdoor movie event (the "Movie") after dark on July 23rd shall be partially or completely ceased, as directed by City, if City reasonably determines that any Activities may interfere with the audience's enjoyment of or participation in Movie.

(v) Inspections. City, through its police department, through Unified Fire Authority, or through other designees, may inspect any or all of the Activities at any time, or from time to time, before or during the Event to determine their safety. Contractor promptly shall correct any safety issues or violations noted by City or its designees, and shall not operate any Activity affected by a safety issue until that issue is fully corrected at Contractor's cost.

(b) Limitation. The Activities specified in subsection 2(a), above, are the only activities that Contractor may provide at the Event. Without limiting the generality of the foregoing, Contractor may not sell novelties, toys or apparel, including, without limitation, "glow sticks" or other glow in the dark items.

(c) Supervision. Contractor will staff the Activities with an adequate number of qualified, adult attendants, who shall, among other things, operate the Activities, safeguard Contractor's property and prevent Contractor's property from being used or occupied by any unauthorized person throughout the Event (including the entire night of July 23-24) and during the entire time that any of Contractor's property is on the Event Site.

(d) Refuse and Waste. Contractor shall regularly (at least every two hours) inspect its area of the Event Site and pick up all trash, debris, etc. Contractor shall store and remove all trash, debris, “grey water” (which shall be confined to one or more tanks owned by Contractor) and other waste resulting from the Activities; provided that City shall remove all trash placed in City’s trash containers at the Event. Following conclusion of the Event, by 10:00 p.m. on 25 July 2015, Contractor also will inspect the area where Contractor provided the Services and thoroughly clean up any debris. Contractor will leave its portion of the Event Site in similar condition as received.

(e) Electricity. Contractor shall provide its own electrical power for the Activities.

(f) Set-Up; Operation; and Removal. Contractor may stage (but not operate) its rides, booths and equipment (collectively, “Equipment”) on the southeast parking lot (the “Southeast Parking Lot”) of Butler Middle School (which adjoins the Event Site) on 21 July 2015, provided that all deliveries or work shall be performed between 8:00 a.m. and 10:00 p.m. Contractor may set-up/stage (but not operate) the Equipment at its City-designated location on the Event Site between 8:00 a.m. and 10:00 p.m. on 22 July 2015, and between 8:00 a.m. and 2:00 p.m. on 23 July 2015. **All setup must be completed by that deadline.** The Activities will be fully set up by 3:00 p.m. and operational by 4:00 p.m. on 23 July 2015, and will operate until 10:30 p.m. on 23 July 2015 and between 12:00 p.m. and 9:45 p.m. on 24 July 2015. Disassembly and removal of the Equipment from the Event Site shall commence at 8:00 a.m. on 25 July 2015 and shall be completed by 10:00 p.m. on 25 July 2015. Disassembled Equipment may be stored in the Southeast Parking Lot until 10:00 p.m. on 26 July 2015. **All breakdown and removal must be completed by those deadlines.**

(g) Right to Cease Operations. City may require Contractor to cease operating any or all of the Activities at any time that City reasonably determines that hazardous conditions exist or that public safety otherwise is at risk.

Section 3. City’s Obligations. In connection with the Event, City shall provide (a) a source of culinary water; (b) a trash container for Contractor’s use; (c) public toilets; and (d) a reasonable level of security through City’s police department.

Section 4. Permits and Licenses. The following permits and licenses are required:

(a) Food Handler’s Permit. Contractor shall assure that a current food handler’s permit issued by the Health Department is in effect for at least one person who must be on premises at each of the Booths at all times. City advises that the food handler’s permit costs \$25-30 and must be obtained before applying for the temporary event permit described below. **A copy of Contractor’s food handler’s permit must be provided to City no later than 2 July 2015.**

(b) Temporary Event Permit. Contractor also must obtain a temporary event permit from the Health Department for the Booths that is of sufficient duration to cover the entire period of time that Contractor conducts the Activities. City advises that such permit costs between \$45 and \$95 per day, and may be obtained from the Health Department between 9:00 a.m. and 4:00 p.m., Monday through Friday, at 788 East Woodoak Lane (enter from 900 East at 5400 South). **A copy of Contractor’s temporary event permit must be submitted to City on or before 2 July 2015.**

Additional information concerning such health department permits is available through the Health Department’s web site (www.slvhealth.org, under the “Environmental Health” and “Food” sections).

(c) Temporary Sales Tax License. Contractor must obtain a sales tax license from the Utah State Tax Commission, maintain appropriate records and make appropriate sales tax payments. This will be coordinated by the Event’s chairperson.

The originals of Contractor's permits and licenses must be available at Contractor's Booths throughout their operation. Contractor's failure to timely provide copies or originals, as applicable, of the foregoing permits and licenses will result in revocation of this Agreement by City.

(d) Security. Placement of any Equipment or other property of Contractor on or about the Event Site shall be at Contractor's own risk. City shall have absolutely no liability for any theft, loss, damage, etc. occurring to Contractor's possessions before, during or after the Event.

Section 5. **Compensation**. Contractor shall pay to City an amount equal to the sum of the following:

- (a) Base Fee. \$9,000 (the "Base Fee"); plus
- (b) Rides Sales. Fifteen percent (15%) of Contractor's sales (net of sales tax) in excess of \$50,000 from the Rides (the "Rides Sales") at the Event; plus
- (c) Games. \$1,000 for the Games (the "Games Fee"), at the rate of \$100/Game; plus
- (d) Booths. \$750 for the Booths (the "Booths Fee"), at the rate of \$150/Booth.

The Base Fee shall be paid to City's representative by noon on 24 July 2015. At noon on 25 July 2015, or such later time as City's representative reasonably shall designate, Contractor shall (y) meet with City's representative to disclose the results of the Rides Sales, and (z) remit to City the Games Fee, the Booths Fee, and City's 15% portion of Rides Sales. Contractor shall maintain accurate books and records concerning all Rides Sales at the Event, and shall safeguard such records and make them available for City's inspection promptly upon City's request at any time during the six month period after the Event.

Section 6. **Age Standards**. Contractor shall enforce appropriate age standards for the Rides to assure public safety.

Section 7. **Insurance**. Contractor shall maintain in full force and effect a broad form comprehensive workmen's compensation, bodily injury and property damage liability insurance policy or policies against claims for damage or injury to persons or property arising out of any of the Activity or the Services (i.e.—whether Equipment-based, supervision-based, or otherwise) in connection with the Event. Such policy shall be maintained on the minimum basis of Three Million Dollars (\$3,000,000.00) combined single limit. Contractor shall cause City, Cottonwood Heights Parks and Recreation Service Area ("CHPRSA"), Canyons School District ("CSD"), and their respective officers, employees and other designees to be named as additional insureds under such policy, and shall provide to City a certificate evidencing such insurance coverage at least three business days before the Event. All insurance required to be carried hereunder shall be with companies, on forms and with loss payable clauses reasonably satisfactory to City. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which City may carry.

Section 8. **Hold Harmless Undertaking**. Contractor agrees, covenants, and undertakes to indemnify, hold free and harmless, assume liability for, and defend City, CHPRSA, CSD and their respective officers, employees, agents, servants and representatives (collectively, the "Indemnitees") from any and all losses, costs, and expenses, including but not limited to monetary damages, attorney's fees, investigative and discovery costs, court costs, fines, penalties, increased taxes, and all other sums, that any of the Indemnitees may incur, face, pay or become obligated to pay on

account of any, all, and every demand for claim or assertion of liability, or any claim or action thereon, arising or alleged to have arisen out of any of the Services, the Activities, or this Agreement. The foregoing indemnities, etc. shall not, however, be deemed to waive or modify any rights, defenses, protections or limits of liability of City against third parties under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. § 63G-7-101, *et seq.*).

Section 9. **General.** This Agreement shall be interpreted in accordance with Utah law. Section headings are for convenience only. Time is the essence of this Agreement. This Agreement may only be modified in a writing signed by both parties. This Agreement may be executed and delivered electronically, with the same legal effect as manual execution and physical delivery. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to an award of its attorneys fees and costs, whether incurred with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding. If any portion of this Agreement is deemed unenforceable or invalid by a court of competent jurisdiction, such portion shall be deemed severed from this Agreement to the extent of such unenforceability or invalidity.

DATED effective the date first-above written.

CONTRACTOR:

CITY OF FUN CARNIVAL, INC.,
a Utah corporation

By: _____
Brad Melendez, President

CITY:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

By: _____
Kory Solorio, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

Exhibit to Event Proposal

(Attach Listing of Prices for Rides and Games, and Description of and Prices for Food Items)