

THIS AGREEMENT (the "Agreement") dated as of April _____, 2018 (the "Effective Date") is made by and between Rick Larson, dba Wold Amusements ("Contractor") and the City of Commerce, a municipal corporation (the "City").

RECITALS

WHEREAS, the City is planning on hosting a carnival during the City's annual Independence Day Celebration. The City has previously used the services of Contractor and is seeking to do so again; and

WHEREAS, Contractor will operate a carnival for a period of five days at Rosewood Park located at 5600 Harbor Street, Commerce, California that will commence on Saturday, June 30, 2018 and end on Wednesday, July 4, 2018; and

WHEREAS, Contractor represents that it is specially trained, experienced and competent to perform the special services that will be required by this Agreement; and

WHEREAS, Contractor is skilled in the professional calling necessary to perform the services and duties to be performed under this Agreement and the City is relying upon the skill and knowledge of Contractor to perform said services and duties; and

WHEREAS, Contractor is willing to render such services as hereinafter defined by the terms and conditions set forth below.

AGREEMENT

1. **Scope of Services and Schedule of Performance.**

Contractor shall perform the services (the "Services") set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference. The Services shall be performed in accordance with the schedule set forth in Exhibit "A". Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City.

2. **Term.**

This Agreement shall take effect upon the execution by the parties and shall conclude on July 5, 2018.

3. **Compensation.**

The City shall receive the total gross receipts from the sale of tickets for amusement rides and other payments in compliance with the schedule set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference. Payments shall be made in the form of check made payable to the City of Commerce at the time of settlement, which shall occur on July 5, 2018 by 5:00 p.m.

4. Financial Records.

Contractor shall maintain complete and accurate records with respect to fees and costs incurred and revenues generated under this Agreement. All such records shall be maintained on a generally accepted accounting basis and be clearly identified and readily accessible. Contractor shall keep, maintain and provide free access to such books and records to examine and audit the same, and to make transcripts thereof as necessary, and to allow inspection of all work data, documents, proceedings and activities related to this Agreement for a period of three years from the date of final payments under this Agreement.

5. Independent Contractor.

A. Contractor is and shall perform its services under this Agreement as a wholly independent contractor. Contractor shall not act nor be deemed an agent, employee, officer or legal representative of the City. Contractor shall not at any time or in any manner represent that it or any of its agents, employees, officers or legal representatives are in any manner agents, employees, officers or legal representatives of the City. Contractor has no authority to assume or create any commitment or obligations on behalf of the City or bind the City in any respect. This Agreement is not intended to and does not create the relationship of partnership, joint venture or association between the City and Contractor. None of the foregoing shall affect any privilege or protection against disclosure which applies to the services Contractor undertakes under this Agreement.

B. Contractor agrees to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent contractor and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between City and Contractor, then Contractor agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

6. Contractor to Provide Required Personnel; Subcontracting.

Contractor shall provide and direct the necessary qualified personnel to perform the Services required of, and from, it pursuant to the express and implied terms hereof, with the degree of skill and judgment normally exercised by recognized professional firms performing services of a similar nature at the time the Services are rendered, and to the reasonable satisfaction of the City. All of the services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in such work shall be qualified to perform such Services, attired in neat, clean, and identifiable clothing. Overnight quarters (bunkhouse) for personnel shall be provided by Contractor. No employee shall sleep in tents or any ride. A list of all employees, along with social security and driver's license or California Identification card numbers shall be submitted to the City by June 15, 2018. Contractor reserves the right to determine the assignment of its own employees for the performance of the Services. However, the City reserves the right, for good cause, to require Contractor to exclude any employee from performing the Services on the City's premises.

7. Responsible Principal and Project Manager.

Contractor shall have a Responsible Principal and a Project Manager who shall be principally responsible for Contractor obligations under this Agreement and who shall serve as principal liaison between the City and Contractor. Designation of another Responsible Principal or Project Manager by Contractor shall not be made without the prior written consent of the City.

8. City Liaison.

Contractor shall direct all communications to the City Administrator or his designee. All communications, instructions and directions on the part of the City shall be communicated exclusively through the City Administrator or his designee.

9. Financial Condition.

Prior to entering into this Agreement, Contractor has submitted documentation acceptable to the City Administrator, establishing that it is financially solvent, such that it can reasonably be expected to perform the Services required by this Agreement. Financial information submitted to the City Administrator shall be returned to Contractor after review and shall not be retained by City.

10. Licenses.

Contractor warrants that it and its employees have obtained all valid licenses and/or certifications generally required of professionals providing services such as the Services, by all applicable regulating governmental agencies, and are in good standing with such applicable regulating governmental agencies.

11. Performance Evaluation.

The work product required by this Agreement shall be utilized as the basis for review. Any comments or complaints received by City during the review period, either orally or in writing shall be considered. If any noncompliance with the Agreement is found, City may direct Contractor to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

12. Non-Compete Clause.

The City agrees that it will not sponsor or book directly or indirectly any other show, amusement or attraction of a similar nature to that of the Contractor's operation for ninety (90) days prior to the date of commencement of the event.

13. Compliance with Laws.

Contractor shall ensure that its employees and its subcontractors, if any, comply with all applicable city, county, state, and federal laws and regulations (including occupational safety and environmental laws and regulations) in performing the Services and shall comply with any directions of governmental agencies and the City relating to safety, security, and the like.

14. Insurance.

Contractor shall maintain insurance and provide evidence thereof as required by Exhibit "C" hereto (the "Required Insurance") which is attached hereto and incorporated herein by this reference, for the term provided herein. Such insurance shall be provided from June 22, 2018 through July 13, 2018. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, the City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Contractor and the cost of such insurance may be deducted, at the option of the City, from payments due Contractor. Contractor shall submit the required proof of insurance by June 8, 2018.

15. Warranty and Liability.

Contractor warrants that it will perform the Services provided under this Agreement with the degree of skill and judgment normally exercised by recognized professionals performing services of a similar nature at the time the services are rendered. Contractor shall be liable for injury or loss caused by the negligence of, or breach of this warranty by, Contractor, its employees, its subcontractors, if any, and/or its agents hereunder. This warranty survives the completion and/or termination of this Agreement.

16. Indemnification.

Contractor shall indemnify and hold the City and their respective officials, officers, agents and employees harmless from and against any and all liabilities, losses, damages, costs and expenses the City and their respective officials, officers, agents and employees hereafter may suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property proximately caused by any negligent acts, errors, or omissions by Contractor, its employees, its subcontractors or its agents in the performance of the Services hereunder. Contractor shall not be liable to the extent that any liability, loss, damage, cost, and expense is caused solely from an act of negligence or willful misconduct by the City or its respective officials, officers, employees or agents. Upon demand, Contractor shall promptly provide a defense to such claims, actions or right of action (at law or equity) and shall promptly pay for all associated and resulting costs, damages, settlements, penalties, judgments, fees and expenses, including attorneys' fees and costs.

17. Confidentiality.

Contractor shall maintain as confidential and not disclose to others, either before or after the termination of this Agreement, any data, documents, reports, or other information provided to Contractor by the City, or employees or agents of the City, or any data, documents, reports, or other information produced by Contractor during its performance hereunder, except as expressly authorized in writing by the City, or to the extent required for: (1) compliance with professional standards of conduct for the preservation of the public safety, health, and welfare, but only after Contractor notifies the City of such need for disclosure; and (2) compliance with any court order or other government directive or requirement, but only after Contractor notifies the City of such

an order, directive, or requirement. Contractor shall keep all "Confidential" materials received or generated under this Agreement in separate files marked "Confidential." Any non-compliance by Contractor with this part of the Agreement shall be deemed a material breach of this Agreement. The obligations of this paragraph shall survive the termination of this Agreement.

18. Covenant against Contingent Fees.

Contractor warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, City or percentage from the award or making of this Agreement, except for subcontractors listed in this Agreement. For breach or violation of this warranty, the City shall have the right, among other available legal remedies, to terminate this Agreement without liability, or in its discretion, to deduct from the consideration payable to Contractor, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Conflict of Interest.

Contractor covenants that neither it nor any officer or principal of its firm have any interests, nor shall they acquire any interest, directly or indirectly which will conflict in any manner or degree with the performance under this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code § 81000, *et seq.*) and all other laws, respecting this Agreement and that no Services shall be performed by either an employee, agent, or a subcontractor of Contractor, who has a conflict relating to the City or the performance of Services on behalf of the City.

20. Other Agreements.

Contractor warrants that it is not a party to any other existing agreement that would prevent Contractor from entering into this Agreement or that would adversely affect Contractor's ability to perform the Services under this Agreement. During the term of this Agreement, Contractor shall not, without City's prior written consent, perform services for any person, firm, or corporation other than City if such services could lead to a conflict with Contractor's obligations under this Agreement.

21. Termination.

This Agreement may be terminated, prior to the expiration of its term, only in the following manner:

- a. by the written mutual agreement of the parties hereto; or
- b. by the City, with or without cause, upon 30 days written notice to Contractor pursuant to Section 26 of this Agreement.

The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the third (3rd) day following delivery of the notice. In the event of such termination, City agrees to pay Contractor for services satisfactorily rendered prior

to the effective date of termination. Immediately upon receiving written notice of termination, Contractor shall discontinue performing services, preserve the product of the services, and turn over to City the product of the services in accordance with written instruction of City.

22. Waiver of Breach.

No waiver of any term, condition or covenant of this Agreement by the City shall occur unless signed by the City Administrator and such writing identifies the provision which is waived and the circumstances or period of time for which it is waived. Such waiver shall be for the specified period of time only and shall not apply to any subsequent breach. In addition, such waiver shall not constitute a waiver of any other term, condition or covenant of this Agreement nor shall it eliminate any remedies available to the City for any breaches of this Agreement which are not excused by such waiver. A delay in communicating a failure of Contractor to satisfy a term, condition or covenant in no way waives that term or any remedies available due to its breach.

23. Assignment.

Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by Contractor, nor shall this Agreement inure to the benefit of any trustee in bankruptcy, receiver, or creditor of Contractor, whether by operation of law or otherwise, without the prior written consent of the City which may be withheld in its sole discretion. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without such consent shall be void and of no effect.

24. Arbitration.

If any dispute arises out of or relates to this Agreement, or the breach thereof, and if such a dispute cannot be settled through informal discussions, the parties agree to resolve any disputes involving monetary amounts only, and the dispute is over less than \$100,000, by binding arbitration pursuant to the rules of the American Arbitration Association by an arbitrator sitting in Los Angeles County.

25. Attorneys' Fees.

In the event arbitration or a judicial proceeding is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and attorneys' fees incurred in connection therewith.

26. Notices.

Notices provided hereunder shall be delivered by certified First Class U.S. Mail, postage prepaid, or by personal service as required in judicial proceedings, directed to the address provided below:

For the City:

City of Commerce
Attn: City Administrator
2535 Commerce Way
Commerce, California 90040
Attn: Robert Lipton, Director of Parks and Recreation

For Contractor:

Rick Larson
Wold Amusements
P.O. Box 49
Hanford, CA 93232

Notice shall be deemed received three days after its mailing to the above address or upon actual receipt as indicated by return receipt, whichever is earlier. Personal service shall be deemed received the same day personal delivery is affected.

27. Governing Law.

The validity, performance and construction of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made to be performed therein. Any litigation commenced by either party to this Agreement shall be venued in Los Angeles County, California.

28. Severability.

Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be reasonably interpreted to give effect to the intentions of the parties.

29. No Construction of Agreement against any Party.

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, it shall not be construed against any party on the basis that such party drafted this Agreement or any provision thereof.

30. Entire Agreement and Amendments to Agreement.

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, negotiations, and agreements, whether oral or written, between the parties with respect to such subject matter, and no addition to or modification of this Agreement or waiver of any provisions

of this Agreement shall be binding on either party unless made in writing and executed by Contractor and the City.

31. No Representations Except as Expressly Stated in this Agreement.

Except as expressly stated in this Agreement, no party, nor its employees, agents or attorneys have made any statement or representation to any other party or its employees, agents or attorneys regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation and/or promise of any other party, its respective employees, agents or attorneys in executing this Agreement.

32. Counterpart Signatures.

This Agreement may be executed in one or more counterparts. When this Agreement has been properly signed by an authorized representative of each of the parties hereto, it shall constitute a valid Agreement, though each of the signatories may have executed separate counterparts hereof.

IN WITNESS WHEREOF, the parties hereto have each executed or caused to be executed this Agreement as of the Effective Date.

CITY OF COMMERCE

DATED May _____, 2018

By: _____
Oralia Rebollo, Mayor

ATTEST:

Lena Shumway, City Clerk

CONTRACTOR

DATED: May _____, 2018

By: _____
Name: .

APPROVED AS TO FORM

By: Norma Copado
Title: City Attorney

EXHIBIT A

ADDITIONAL TERMS

The parties hereby mutually agree as follows:

1. Dates

Contractor to present a carnival for a period of three days commencing on Saturday, June 30, 2018 through Wednesday, July 4, 2018.

2. Hours of Operation

Hours of operation for the Carnival:

Saturday	June 30, 2018	2:00 p.m. – 10:00 p.m.
Sunday	July 1, 2018	2:00 p.m. – 10:00 p.m.
Monday	July 2, 2018	CLOSED
Tuesday	July 3, 2018	5:00 p.m. – 10:00 p.m.
Wednesday	July 4, 2018	12:00 p.m. – 11:00 p.m.

All tickets booths shall be closed thirty minutes (30) prior to the close operations.

3. Premises

City to provide a location at Rosewood Park located at 5600 Harbor Street, Commerce, California that will be available to Contractor on June 25, 2018.

4. Vacation of Premises

Contractor hereby agrees to remove all equipment and vacate premises by 5:00 p.m. on July 9, 2018. Premises shall be left clear of all debris and litter and in same condition as prior to installation of the carnival facilities.

5. Rides and Equipment

A. Contractor agrees to furnish high quality amusement rides that each have a valid current operating permit issued by the Department of Industrial Relations through the Division of Occupational Safety and Health. A minimum of thirteen (13) rides shall be furnished by the Contractor.

There shall be a minimum of twelve (12) major rides, and five (5) kiddie rides. A list of confirmed rides shall be provided to the City by June 5, 2018.

Contractor shall also provide all generators, cables, junction boxes, lights, ticket booths, power hook-up, and skilled operators for all amusement rides.

- B. Contractor shall set-up and operate skill game booths and pay the City \$50 for each booth. By June 12, 2018, Contractor shall provide the City with a list of the type of games to be offered by the Contractor.
- C. Contractor shall set-up and operate food booths, selling the following items: cotton candy, candy apples, soda, hot dogs, corndogs, popcorn, licorice, ice cream, lemonade, and nachos. Contractor shall pay the City a fee of \$50 for each food booth operated by the Contractor.
- D. Contractor shall have exclusive rights to sell cotton candy and candied apples with the exception of local community and approved non-profit groups, which shall have a concurrent right to sell these items on Wednesday, July 4, 2018. Contractor shall not have exclusive rights to sell the following items: hot dogs, popcorn, nachos, sodas, lemonade, ice cream, and candy. Throughout the duration of the carnival, local community groups shall also be allowed to operate food and game booths for the purpose of fundraising.
- E. Coupon prices for all rides shall be one dollar (\$1.00). This price shall be designated as the regular coupon price for all rides. A sheet of forty (40) coupons shall be priced at thirty (\$30) and twenty-four (24) coupons shall be priced at twenty dollars (\$20). Coupons sold at pre-sale shall be in blocks of twenty (20) for ten dollars (\$10) per block.
- F. Wristbands for unlimited rides will be available for purchase for \$20.00 presale (by City) and \$25.00 (sold by Carnival) starting June 30, 2018 @ 2:00 p.m. Presale wristbands will be honored on July 4, 2018. On-site wristbands will not be sold on July 4, 2018.

6. Licenses and Permits

Contractor shall obtain all permits and licenses, which may be required by the Municipal Code to operate within the City of Commerce, as well as all required County and State permits and licenses. The City of Commerce shall waive all costs and fees associated with the procurement of City permits and licenses. All fees and permits must be obtained by June 8, 2018.

7. Box Office, Tickets and Ticket Sellers

Contractor will provide and deliver to the premises, at its own expense, two ticket booths with electrical service and lights. The Contractor shall furnish at its own expense, serially numbered coupons redeemable for each ride. Contractor shall furnish sellers at its own expense to operate and to sell coupons for the amusement rides in the ticket booths it provides. The City shall inspect and receive a list of the coupon numbers to be sold by Contractor. A daily report showing the amount of tickets sold shall be provided to the City at closing. The Contractor shall retain custody of the receipts from the sales until such time as the final settlement is made.

8. Compliance with Safety Laws

At all times the scheduled activity, the Contractor shall fully comply with all laws, order, regulations and statutes of all governmental bodies and agencies with respect to safety, accident prevention, safety equipment and practices. Contractor shall conduct inspections to determine and ensure that safe conditions exist and shall accept sole responsibility for providing a safe place for the benefit of employees, patrons, and all other persons.

9. Location of Equipment

Contractor shall secure advance written approval from the Director of Parks and Recreation or his designated representatives as to the location of all rides and booths.

10. Clean-up

- A. Contractor shall restore the premises to the condition in which it was found on June 26, 2018. Contractor shall submit a one thousand dollar (\$1,000.00) refundable damage deposit to City by June 15, 2018. If damage to the premises is detected, the deposit or portion thereof shall be withheld to pay for repairs. Damage exceeding one thousand dollars (\$1,000.00) shall be invoiced to the Contractor. The deposit or portion to be returned shall be forwarded to the Contractor in a timely manner following inspection of the premises.
- B. Portable toilets and dumpsters will be provided and paid for by the City of Commerce before the agreed-to start date of the event.

11. Security and Logistics

The City agrees to provide trash bins and portable toilets. The City shall provide a large trash bin and eight (8) portable toilets. The City shall arrange and provide for security during carnival hours of operation only. Security for hours of non-operation shall be the sole responsibility of the Contractor. Contractor shall schedule, provide and pay for security during all non-operation hours.

12. Advertising

Placement of any advertisement shall require prior approval by the Director of Parks Recreation. The Contractor agrees to pay the total cost of fifty (50) posters, two thousand five hundred (2,500) flyers, and newspaper ads not to exceed \$1,000.00.

EXHIBIT B

SUMMARY OF PAYMENTS

Contractor agrees to pay the following to the City:

1. 25% of all gross revenue all from ticket sales, which includes, but is not limited to, presale and onsite ticket sales.
2. \$50 for each skill game booth.
3. \$50 for each food wagon or booth.

Time of payment shall be time of settlement. See Agreement, paragraph 3, entitled “Compensation.”

EXHIBIT C

REQUIRED INSURANCE

On or before beginning any of the Services called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry and maintain for the duration of this Agreement, insurance specified below from insurers and under forms of insurance satisfactory in all respects to the City. It must also provide proof thereof that is acceptable to the City of its procurement. Contractor shall not allow any subcontractor to commence work on any subcontract under this Agreement until such subcontractor has obtained all insurance required of Contractor. Such insurance shall not be in derogation of Contractor's obligations to provide indemnity under Section 16 of this Agreement.

1. Comprehensive General Liability and Automobile Liability Insurance Coverage.

Contractor shall carry and maintain Comprehensive General Liability and Automobile Liability Insurance which provides the following:

Minimum coverage: Bodily injury limits of \$1,000,000 for each person and \$2,000,000 for each occurrence; property damage limits of \$500,000 for each occurrence, \$2,000,000 aggregate.

If a Commercial General Liability Insurance 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 real property and automobiles. Insurance coverage shall not be subject to any type of pollution exclusion or owned property exclusions.

2. Errors and Omissions Insurance Coverage.

Contractor shall carry and maintain Errors and Omissions Coverage Insurance which provides a minimum coverage of at least \$1,000,000 for each occurrence, \$2,000,000 aggregate, triggered by manifestation of injury.

3. Worker's Compensation.

Contractor shall carry and maintain worker's compensation as required by the California Labor Code for all persons employed directly or indirectly in connection with this Agreement by Contractor or any subcontractor.

4. Additional Insureds.

The City, its officers, agents and employees must be named as additional insureds or as additional loss payees in all insurance policies required by this Agreement. An endorsement to

this effect shall be delivered to the City prior to the commencement of any work. Satisfaction of any deductible requirement shall be the responsibility of Contractor.

5. Cancellation Clause.

Each of the policies of insurance shall contain a clause substantially as follows:

It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof be reduced until 30 days after receipt by the City Administrator of the City of Commerce of the written notice of such cancellation or reduction of coverage, as evidenced by receipt of a certified letter.

6. Severability Clause.

Each of the policies of insurance shall contain a clause substantially as follows:

The insurance afforded by this policy applies separately to each insured against whom a claim or suit is made or suit is brought, except with respect to the limit of the insurer's liability.

7. Qualifications of Insurer.

All policies of insurance shall be issued by an insurance company acceptable to the City and authorized to issue said policy in the State of California.

8. Approval of Insurer.

The insurance carrier providing the insurance shall be chosen by Contractor subject to approval by the City, provided that such approval shall not be unreasonably withheld.

9. Payment of Premiums.

All premiums on insurance policies shall be paid by Contractor making payment, when due, directly to the insurance carrier, or in a manner agreed to by the City.

10. Evidence of Insurance and Claims.

The City shall have the right to hold the policies and policy renewals, and Contractor shall promptly furnish to the City all renewal notices and all receipts of paid premiums. In the event of loss, Contractor shall give prompt notice to the insurance carrier and the City. The City may make proof of loss if not made promptly by Contractor.