

RESOLUTION 27-2018

VILLAGE OF GILBERTS

A RESOLUTION APPROVING AN AGREEMENT WITH FANTASY AMUSEMENT CO., INC. TO PROVIDE AMUSEMENTS FOR THE 2019 GILBERTS COMMUNITY DAYS FESTIVAL

WHEREAS, the Village of Gilberts ("Village") annually conducts the Gilberts Community Days festival, which will be held on May 30, 2019 through June 2, 2019 (the "Fesitval"); and

WHEREAS, the Festival is held on certain Village-owned property located at 195 Jackson Street, Gilberts, Illinois, commonly known as Town Square Park; and

WHEREAS, Fantasy Amusement Co., Inc. ("Contractor") provides amusements, rides and concessions; and

WHEREAS, the Village desires to engage Contractor to provide amusements, rides and concessions at the Festival pursuant to the terms and conditions set forth in the Agreement attached to this Resolution as Exhibit A.

THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF GILBERTS, ILLINOIS, as follows:

Section 1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Resolution as though set forth in this Section 1.

Section 2. Approval; Authorization. The Village Board of Trustees hereby approves the Agreement and authorizes the Village Administrator to execute the Agreement and such other documents as are necessary.

Section 3. Effective Date. This Resolution shall be in full force and effect after its approval in the manner provided by law.

PASSED BY VOTE OF THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 11 day of Dec. 2018.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Dan Corbett	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Trustee Elissa Kojzarek	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

Resolution No. 27-2018

Trustee Nancy Farrell	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Jeanne Allen	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Lou Hacker	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Guy Zambetti	<input checked="" type="checkbox"/>	_____	_____	_____
President Rick Zirk	<input type="checkbox"/>	_____	_____	_____

APPROVED THIS 11 DAY OF Dec., 2018





Village President, Rick Zirk

ATTEST: 
Village Clerk, Courtney Nicholas

**AGREEMENT TO PROVIDE
AMUSEMENTS**

11

This Agreement to provide amusements (this "*Agreement*") is made as of this ~~12~~ day of *December*, 2018, by and between the VILLAGE OF GILBERTS, Kane County, Illinois, an Illinois municipal corporation ("*Village*"), and FANTASY AMUSEMENT CO., INC., an Illinois corporation ("*Contractor*"). The Village and Contractor are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties."

PREAMBLE

WHEREAS, the Village annually conducts the Gilberts Community Days festival, which will be held on May 30, 2019, through June 2, 2019 (the "*Festival*"); and

WHEREAS, the Festival is held on certain Village-owned property located at 195 Jackson Street, Gilberts, Illinois, commonly known as Town Square Park (the "*Property*"); and

WHEREAS, Contractor provides amusements, rides, and concessions; and

WHEREAS, the Village desires to engage Contractor to provide amusements, rides, and concessions at the Festival, pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals stated above are an integral part of this Agreement and are incorporated into this Agreement by reference and made a part hereof.
2. **Services to be Provided by Contractor.** Contractor, at its sole cost and expense, will provide a combination of rides, amusements, shows, and concessions known as "Fantasy Amusements" for the Festival on the Property. Contractor will furnish, install, and set up all equipment and supplies that are necessary for the operation of the rides, amusements, shows, and concessions, except as otherwise provided herein. Contractor will provide all necessary electrical connections and eclectic current necessary for the power and illumination of all rides, amusements, shows, and concessions. Contractor will also provide sufficient numbers of trained and qualified personnel to sell Tickets and to operate and oversee the rides, amusements, shows, and concessions provided at the Festival. The provision of the rides, amusements, shows, and concessions, and the necessary personnel, equipment, and supplies as described under this Section 2 are hereinafter referred to collectively as the "*Services*."
3. **Dates of Services.** Contractor will provide the Services for the Festival on the following dates and times:

- (A) May 30, 2019 from 6:00 p.m. to 10:00 p.m.
 - (B) May 31, 2019 from 6:00 p.m. to 10:00 p.m.
 - (C) June 1, 2019 from 1:00 p.m. to 10:00 p.m.
 - (D) June 2, 2019 from 1:00 p.m. to 8:00 p.m.
4. **Services to be Provided by the Village.** The Village will provide space at the Property that is reasonably adequate for Contractor to provide the Services. The Village will also furnish: (a) a water connection to Contractor; (b) police protection as deemed necessary by the Village; (c) publicity for the Festival pursuant to Section 14 of this Agreement (d) parking areas for Contractor's semi-trailers and trucks; (e) trash receptacles and removal for the Festival; (f) portable toilet facilities; and (g) a water hose that will run to the Property.
5. **Term.** The Term of this Agreement shall be for a period commencing on May 27, 2019, and concluding on June 3, 2019. This Agreement may be renewed for additional terms by mutual written agreement of the Parties.
6. **Scheduling, Set-up, and Removal of Equipment.** Contractor shall submit all information regarding the Services to the Village no later than February 1, 2019, so that the Village may begin promoting the Festival. Contractor may begin setting up the necessary equipment for the Services beginning on May 27, 2019. The Village will shut down Rollyn Anderson Street beginning May 27, 2019 for the duration of the Festival. Contractor shall remove all equipment, rides, concessions, and other amusements from the Property no later than June 3, 2019.
7. **Festival Tickets.** Tickets to the amusements, rides, and shows provided by the Contractor at the Festival (the "*Tickets*") will be sold by the Contractor during the Festival dates of May 30, 2019 through June 2, 2019. Contractor will provide competent personnel to sell Tickets on these dates. Contractor may also sell Tickets from its auto-ticket boxes. Contractor will provide the Village with a written summary of all Ticket sales no later than June 3, 2019. The Village may sell advance Tickets. Contractor will provide ticket coupons to the Village for advance sales no later than May 1, 2019. All Tickets will be available for sale to the general public according to the Schedule of Prices attached hereto as **Exhibit A**.
8. **Exclusive Food Concessions to Contractor.** The Village agrees that Contractor will have the exclusive right to sell the following food concessions at the Festival: (a) cotton candy; (b) snow cones; (c) corn dogs; (d) funnel cakes; (e) pop corn; and (f) caramel corn. The Village will have the right to allow other vendors to sell food and drink concessions not listed in this Section 8.

9. **Compensation.**

- (A) As the sole consideration for the Contractor's provision of the Services, Contractor shall be entitled to the following:
- (1) Eighty (80) percent of the proceeds from Ticket sales to the Festival up to \$50,000 in sales. For all Ticket sales exceeding \$50,000, Contractor will be entitled to retain seventy-five (75) percent of the proceeds. The Village will retain the remaining proceeds from Ticket sales to the Festival.
 - (2) All of the proceeds from concession game sales during the Festival. However, if Ticket sales for the Festival exceed \$50,000, Contractor will pay the Village \$75.00 per concession game.
 - (3) Contractor will be entitled to retain all proceeds from the sale of its own food concessions at the Festival.
- (B) The Village will pay Contractor the proceeds owed from Ticket sales no later than June 4, 2019. Contractor will pay the Village any proceeds owed from concession game sales no later than June 4, 2019.
- (C) Contractor shall not be entitled to any other compensation or reimbursement except as provided under this Section 9.

10. **Acknowledgment of Independent Contractor Status.** Contractor understands, acknowledges and agrees that the relationship of Contractor to the Village arising out of this Agreement shall be that of independent contractor. It is understood that neither Contractor nor any of Contractor's officers, directors, owners, employees or agents, is an employee of the Village and is therefore not entitled to any benefits provided by the Village to its employees. It is further understood by Contractor that neither Contractor nor any of its officers, directors, owners, employees or agents will be covered under provisions of the workers compensation insurance of the Village and that any injury or property damage on the job will not be the Village's responsibility, except in cases where such injury or damage is the fault of the Village. Also, it is understood that neither Contractor nor any of its officers, directors, owners, employees or agents is protected as an employee or as a person acting as an employee under the provisions of the public liability insurance of the Village and, therefore, will be solely responsible for its own actions. The Village will in no way defend Contractor in matters of Contractor's liability. The hiring of qualified personnel to provide the Services shall be the sole responsibility of Contractor, as shall the discipline and discharge of such personnel. Contractor shall be solely responsible for compensating its personnel. Contractor shall be responsible for paying any expenses it incurs in the

provision of the Services, except as otherwise provided herein. Contractor will not be covered under Social Security, federal or state income tax withholding, or any other payroll withholding program of the Village. Neither Contractor nor its employees shall hold themselves out to members of the public as employees of the Village. Contractor shall be solely responsible for purchasing the equipment and supplies necessary to satisfactorily perform the Services required under this Agreement.

11. **Licenses, Permits, Certifications.** Contractor represents and warrants that it has, and all persons providing the Services on its behalf have, the requisite education, training and experience to properly provide the Services in accordance with the standards set forth and results to be achieved under this Agreement; have procured all licenses, permits, certifications or like permission required by law, rule or regulation to properly provide the Services; will procure all additional licenses, permits, or like permission hereafter required by law, rule or regulation during the Term of this Agreement; and will keep same in full force and effect during the term of this Agreement. All duties by Contractor and its, employees, agents, and contractors shall be performed in a manner consistent with accepted practices for other similar work and in compliance with all applicable laws, including but not limited to the Illinois Carnival and Amusement Rides Safety Act, 430 ILCS 85/1 et seq.

12. **Liability, Indemnification and Insurance.**

- (A) To the fullest extent permitted by law, Contractor shall indemnify the Village and defend and hold the Village, its elected officials, officers, employees, volunteers and agents forever harmless from and against any and all loss, cost, damage and expense, including without limitation court costs and reasonable attorneys' fees, which the Village may suffer, incur or sustain, or for which the Village may become liable by reason of a lawsuit or claim for compensation arising in favor of any person, including, without limitation, the employees, officers, independent contractors, subcontractors or invitees of Contractor or the Village, on account of the injury to or the death of any person(s), or the loss or damage of any property arising out of, incident to, resulting directly or indirectly from, or in connection with any act and/or omission of Contractor, its subcontractors and any other party for which Contractor may be held liable under any theory of liability, the breach by Contractor of any provisions of this Agreement, or the exercise by Contractor of the rights and privileges granted to Contractor or the performance of any of the obligations undertaken by Contractor under this Agreement, except that Contractor shall have no liability for damages or the costs incident thereto to the extent caused by the intentional wrongful acts or omissions of the Village or its employees or agents. Further, Contractor will not be liable for reasonable wear and tear to the Property caused by Contractor's vehicles. The Village reserves the right to independently defend against or

participate in Contractor's defense of any such claim, at the Village's own expense. This reserved right shall not in any way diminish Contractor's indemnification, defense and hold harmless obligations hereunder. Except with the written consent of the Village, Contractor shall not consent to the entry of any judgment or settlement which does not include as an unconditional term thereof, the giving by the claimant or plaintiff to the Village of an unconditional release from all liability in respect of such third party claim or demand.

- (B) In furtherance of and not in limitation of its responsibilities and promises in this Agreement, Contractor shall secure and maintain at its own expense, and cause its subcontractors to secure and maintain at their own expense, insurance with coverages and terms as provided in **Exhibit B** attached to and incorporated herein by reference.
- (C) Contractor shall be responsible for maintaining, at its sole cost and expense, insurance covering any of its property located on the Property. The Village shall not be responsible or liable for injury to or death of any person, or for damage to, loss, theft or destruction of any materials, tools, machinery, animals, equipment or other property, incurred or sustained as a direct or indirect result of or relating to the exercise by Contractor, its agents, employees or other persons acting on behalf of Contractor or with Contractor's consent, of the rights and privileges granted to Contractor under this Agreement, except to the extent any injury, damage or loss is caused by the willful and wanton or intentional acts or omissions of the Village or its employees or agents.
- (D) To the fullest extent permitted by the laws of the State of Illinois, Contractor hereby releases the Village, its elected officials, officers, employees, volunteers, agents or other persons acting on its behalf, for injury to or the death of any person or for the damage to or destruction of any property sustained or incurred by Contractor, or any person claiming by, through or under Contractor in connection with the exercise by such persons of rights and privileges granted to Contractor, or the performance of Contractor's obligations under this Agreement, except to the extent any injury or death, or damage or destruction of any property is proximately caused by or results from the intentional wrongful acts or omissions of, or by the breach of this Agreement by, the Village or its employees, volunteers, agents, or others acting on its behalf.

13. **Compliance With Applicable Laws.** Contractor shall comply with all applicable laws, regulations and rules of any Federal, State, County, Municipal and/or other governmental entity or regulatory body now in effect, or which may be effect during the Term of this Agreement, and relating to Contractor's provision of the Services under and pursuant to this Agreement, including without limitation all applicable laws, rules and regulations pertaining to equal employment opportunity

and non-discrimination in the provision of services to the public for or on behalf of a governmental unit. Contractor specifically represents and certifies to Village that Contractor complies, and shall comply, with all applicable provisions of the Illinois Human Rights Act and that it maintains and will maintain a written sexual harassment policy in full compliance with Section 2-105(A)(4) thereof. 775 ILCS 5/2-105(A)(4).

14. **Termination.** This Agreement may be terminated immediately by Village in the event of Contractor's material breach of any of its obligations under this Agreement, including, without limitation, Contractor's failure to satisfactorily perform the Services. In such an event, the Village may recover from Contractor any damages incurred by the Village proximately caused by such breach, including, without limitation, reasonable attorney's fees and costs, and Contractor shall not be entitled to any compensation or remuneration from the Village.
15. **Advertising.** The Village may promote and advertise the Festival by such other means as the Village shall determine in its sole discretion. Contractor may advertise the Festival only with the prior written permission of the Village, and Contractor shall submit the content of any such advertising to the Village for its review and approval.
16. **Notices.** Any notices which are required to be given or which may be given under this Agreement shall be sent certified mail return receipt requested to the Parties at their respective addresses set forth under their respective signatures below (or such other address as either of the Parties may hereinafter designate to the other Party in writing) or by hand delivery evidenced by receipt.
17. **Non-Assignment.** Contractor understands that this Agreement is a contract for the personal services of Contractor and its employees and that it is made by Village in reliance on the representations of Contractor with respect to its employees' personal skill(s), fitness, knowledge, and ability to safely and properly provide the Services. Accordingly, this Agreement may not be assigned by Contractor.
18. **Force Majeure.** If either Party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, strike, lockout or other labor trouble, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental authority, riot, war, rebellion or other causes beyond the reasonable control of such Party, or other acts of God, then upon written notice to the other Party, the affected provisions and/or other requirements of this Agreement shall be suspended during the period of such disability and such Party shall have no liability to the other in connection therewith. Each Party shall make all reasonable efforts to remove such disability within seven (7) days of giving notice of such disability.
19. **Freedom of Information Act.** Contractor agrees to maintain all records and documents related to this Agreement in compliance with the Freedom of

Information Act, 5 ILCS 140/1 et seq, (the "Act"). Contractor acknowledges that this Agreement is subject to the Act. In addition, Contractor will produce public records which are responsive to a request received by the Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the timeframes required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event the Village is found to have not complied with the Act due to Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold the Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

20. Miscellaneous.

- (A) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, whether oral or written, of the Parties in connection therewith. No modification of this Agreement shall be effective unless made in writing, signed by both Parties, and dated after the date hereof.
- (B) Where the context admits in this Agreement, words in the masculine gender shall include the feminine gender, words in the singular number shall include the plural number, and the word Contractor or any pronoun representing it shall include all officers, directors, owners, employees, agents or any other person acting on or purporting to act on behalf of Contractor
- (C) Any term or provision of this Agreement which is invalid or unenforceable by virtue of any statute, ordinance, court order, final administrative action or otherwise, shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement
- (D) No assent or waiver, express or implied, of any breach of any one or more of the terms of this Agreement shall be deemed to be taken to be a waiver of any other term or condition or assent to continuation of such breach
- (E) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. Any legal action commenced with respect to this Agreement shall be commenced and prosecuted only in a court of proper jurisdiction in Kane County, Illinois.
- (F) This Agreement is not intended, and shall not be construed, to create any partnership or joint venture between the Village and Contractor.

- (G) In the event that any party must take action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees, court costs, and any other collection costs.
- (H) This Agreement is made solely between the Parties, and is not intended, and shall not be construed, to create any rights of, or duties or obligations to, any third party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

VILLAGE OF GILBERTS
87 Galligan Road
Gilberts, IL 60136

FANTASY AMUSEMENT CO., INC.
P.O. Box 944
Prospect Hts., IL 60070

By: 

By: 

VOID IF NOT
Returned By
Jan 1 2019

EXHIBIT A
Schedule of Prices

One ticket = \$1.25 4 tickets \$5.00

Sheet of 18 tickets = \$20.00

Each ride takes 2-5 tickets per person per ride.

Wristbands - \$25 per person per session, per day. Ride specials to be determined NLT February 1, 2019

**Agreement to Provide
Amusements
Village of Gilberts and Fantasy Amusement Co., Inc.**

EXHIBIT B

INSURANCE REQUIREMENTS

Contractor shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Village shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Village. Any insurance or self-insurance maintained by the Village shall be excess of the Contractor's insurance and shall not contribute with it.

B. Business Auto and Umbrella Liability Insurance

If applicable, Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

If applicable, Contractor shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Village has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Village and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the performance of the Services by the Contractor.

D. General Insurance Provisions.

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish the Village with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Village prior to the cancellation or material change of any insurance referred to therein. Written notice to the Village shall be by certified mail, return receipt requested.

Failure of the Village to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Village to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Village shall have the right, but not the obligation, of prohibiting Contractor from entering the Property until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Village.

Failure to maintain the required insurance may result in termination of this Contract at the Village's option.

Contractor shall provide certified copies of all insurance policies required above within 10 days of the Village's written request for said copies.

2. Acceptability of Insurers

Insurance shall be purchased from insurance companies which obtain a rating from A.M. Best of not less than A VII using the most recent edition of the A.M. Best's Key Rating

Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Village has the right to reject insurance written by an insurer it deems unacceptable. Insurance companies providing the insurance described herein shall be licensed to sell insurance in the State of Illinois.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Village, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

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