

State of California

California Exposition & State Fair
1600 Exposition Boulevard
Sacramento, CA 95815

MEMORANDUM

Date: April 19, 2018

To: Annual State Fair Committee
California Exposition & State Fair

Via: Rick K. Pickering, Chief Executive Officer

From: Samantha Brown, Administrative Deputy General Manager
California Exposition & State Fair

Subject: Review and Approval of Revenue Generating Agreement for Midway Services for 2019 to 2028

Background

In January of 2009, Cal Expo entered into a 10 year Revenue Generating Agreement with Butler Amusements (Butler) to provide all Midway Services during the annual State Fair. The Agreement expires October 1, 2018. During the first 9 years of the Agreement, Butler has contributed some \$16.5 Million to Cal Expo (\$14 million in commissions, \$2 million in capital investments to the facility, and \$500,000 toward advertising and promotional funds.)

In August of 2017, with the impending expiration of the Agreement in October of 2018, Staff prudently began the process of soliciting interest from Midway operators who might wish to bid on this contract. Due to the large size of Cal Expo's Midway, other than RCS there are few Midway operators that have enough equipment and personnel to support the State Fair's needs. Consequently, in an effort to determine if a Request For Proposals (RFP) process was needed to create a new contract, Staff issued a Letter Of Intent (LOI) on October 3, 2017 seeking qualified parties that may be interested in operating the State Fair's Midway beginning in 2019. The LOI was sent to 8 midway operators in California throughout the United States. After a four-week period Cal Expo received only one formal response to the LOI, and that response was from Butler Amusements.

This single response to the LOI was considered by the Board on December 8, 2017. At that time the Board approved Staff to begin exclusive negotiations with Butler Amusements for State Fair Midway services.

Current Status

Staff has negotiated with Butler Amusements over the past three months toward obtaining a beneficial Revenue Generating Agreement for the operation of the State Fair's Midway from October 1, 2018 until October 1, 2028.

Below is a chart outlining the major financial and operational aspects of the proposed Revenue Generating Agreement, comparing what the terms were at the end of the 2018 Agreement and what Staff is proposing in the new Agreement.

CONTRACT ITEM	Status as of 2018 Fair	Negotiated for new contract
<i>Term</i>	Oct 2008 - Oct 2018	Oct 2018 - Oct 2028
<i>Commission</i>	\$0-\$1,681,676 = 42% \$1,681,677 - \$3,363,354 = 40% \$3,363,355 and up = 35% Tied to CPI	\$0 - \$1,750,000 = 42% \$1,750,001 - \$3,500,000 = 40% \$3,500,001 and up = 35% Gross ranges will increase 2% each year if \$4 Million gross is achieved, if not - the ranges would stay the same for that year
<i>Capital Outlay</i>	\$238,897 50% to CE for infrastructure 50% for reoccurring Midway maintenance at CE's discretion	\$275,000 per year \$200,000 to CE for infrastructure \$75,000 Midway customer enhancements approved by CE (but retained by Butler)
<i>Ride Inspection</i>	75% of cost of inspection services paid to CE	75% of costs for inspection services paid to CE
<i>Promotional</i>	\$59,724	\$25,000
<i>Photos</i>	20% of net sales	25% of net sales
<i>Customer Service</i>	min of 10 Ticket Booths min of 10 Rest Area Canopies min of 1 Customer Services Booth	min of 15 Ticket Booths min of 13 Rest Area Canopies min of 1 Customer Services Booth
<i>Insurance</i>	GL \$5 Million Subrogation WC - None	GL \$5 Million Subrogation WC - Must Have

If State Fair's Midway gross remained flat, the estimated revenue to Cal Expo over the next 10 years would be \$19.5 Million. Over the course of the proposed new Agreement these financial changes will benefit Cal Expo, as well as motivate both parties to work toward increasing the Midway gross each year.

Recommendation

It is respectfully recommended that the Annual State Fair Committee review and discuss the proposed Revenue Generating Agreement with Butler Amusements for the years 2019 through 2028. Based on the past 9 year track record of growth and positive experience with Butler Amusements, coupled with our mutual commitment to provide the best Midway operation for the patrons of the California State Fair, Staff respectfully recommends approval of the proposed Revenue Generating Agreement.

California Exposition & State Fair

CALIFORNIA STATE FAIR AMUSEMENT SERVICES AGREEMENT

Agreement No. 18-0660

THIS AGREEMENT entered into in October 2018, by and between California Exposition & State Fair, an independent entity of the State of California, hereinafter called "Cal Expo," and Butler Amusements, Inc., a California corporation, hereinafter called "Butler." For convenience herein, "the Parties" refers to Cal Expo and Butler.

RECITALS

Whereas, Cal Expo desires to maintain a fully operational carnival midway including, but not limited to the latest and most popular midway rides, attractions, games, and food and beverage concessions; related equipment such as ticket booths, generators, rest areas, benches, and plant material; and full-time personnel trained in and experienced in management, safety, marketing, public relations, and promotions;

Whereas, Cal Expo issued a Letter of Intent on October 2, 2017, to amusement and midway providers seeking those wishing to compete in a Request for Proposals (RFP) process for an agreement up to ten years beginning in 2019; and

Whereas, Cal Expo received one response to its Letter of Intent, which was submitted by Butler, and met the qualifications set forth in the Letter of Intent.

Now, therefore, in consideration of the foregoing recitals, Cal Expo and Butler agree as follows.

TERMS AND CONDITIONS

1. PREMISES

Cal Expo shall permit Butler to annually use, subject to the terms and conditions of this Agreement, carnival areas sufficient in size, as mutually agreed upon, to accommodate not fewer than fifty-five (55) rides; not fewer than forty (40) games (not to exceed 2,500 linear feet); maximum of fourteen (14) food and beverage concession stands including one (1) cart, unless otherwise mutually agreed upon by the parties, plus one (1) cook house for employees with public access; and appurtenant support space for equipment including RV parking to accommodate Butler's needs. Said carnival space shall not be less than six hundred and eighty five thousand square feet (685,000 sq. ft.), unless otherwise mutually agreed upon by the parties. All locations for Butler's equipment must be approved by Cal Expo's General Manager in advance. Additional rides, attractions, games, concessions and carts may be increased upon mutual agreement. Cal Expo also agrees to provide an area for carnival storage for a reasonable time without charge.

Butler accepts the premises in “as is” condition. No warranties, expressed or implied, as to the existing condition of the premises have been made to Butler. Cal Expo reserves the right to designate and redesignate public access in and out of the premises. Butler acknowledges and agrees that any repairs or improvements to the premises will be at Butler’s sole expense, unless otherwise agreed to in writing by Cal Expo.

Butler agrees to return the premises and grounds in the same condition as they were before use was permitted hereunder and agrees to restore any property of Cal Expo damaged by Butler or its licensee(s) to Cal Expo’s satisfaction, ordinary wear and tear, damage by the elements, acts of God, or casualties beyond the control of Butler excepted.

The parties agree that this Agreement does not convey, demise, or let any interest of Cal Expo in any real property, and the occupancy of such premises by Butler during the term of this Agreement shall not confer on Butler any title, interest, or right to real property against Cal Expo.

Butler shall not make any alteration or improvement, or otherwise permanently affix any personal property, to the lands or improvements of Cal Expo without written authorization by Cal Expo for that purpose.

The route of access to the premises may be designated and redesignated by Cal Expo.

Butler agrees that the premises and any improvements upon the premises shall at all times remain free and clear from all mechanics’ liens.

2. TERM

The term of this Agreement shall commence on the date first above written and terminate on October 1, 2028. The term of this Agreement does not convey to Butler the right to occupy and use the premises except during the annual California State Fair. The annual State Fair generally starts around the second or third Friday in July and lasts for 17 days. Cal Expo reserves the right to designate and redesignate the operating days during the State Fair. If changes to the annual State Fair operating days occur, Cal Expo must notify Butler no later than October 21 in any year in which this agreement is in force, or as soon as reasonably possible. Should Cal Expo make changes to the number of operating days of the State Fair or redesignate operating days, Cal Expo and Butler agree to renegotiate the commission and payment schedule provided herein

3. COMPENSATION

Compensation disbursements to Cal Expo shall be made and received by California Exposition & State Fair, Accounting Office, 1600 Exposition Boulevard (95815), and PO Box 15649, Sacramento, CA 95852. All checks to Cal Expo shall be made payable to “California Exposition & State Fair.” All checks to Butler shall be made payable to “Butler

Amusements.” Games and food and beverage stands will not be subject to additional compensation. The commission schedule below considers rent for games and food and beverage stands.

a) Rides and Attractions

- 1) For each year under this Agreement, Butler shall compensate Cal Expo based on the commission schedule shown below:

42% of the ride and attraction receipts up to \$1,750,000;
40% of the ride and attraction receipts from \$1,750,001 up to \$3,500,000; and
35% of the ride and attraction receipts from \$3,500,001 and above.

The tiers will increase by 2% for each year of this Agreement in which ride and attraction gross receipts exceed \$4 mil. If the gross receipts do not exceed \$4 mil., the % tiers will stay the same as the previous year.

2) Ride and Attraction Prices

Ride prices shall be translated to an appropriate number of credits for all rides to be operated by Butler for each State Fair. Butler will also offer Pay One Price unlimited daily ride credentials and the value will be agreed to by the Parties. Each credit must have a standard monetary value, the value of which shall be agreed to by the parties. No later than June 15 of each year, Butler shall submit in writing to Cal Expo for approval, a list of all rides, which must include the number of credits required for each ride. Further, Butler and Cal Expo shall mutually agree as to which rides shall be designated as kiddy, family, major, spectacular, super spectacular, or extreme.

3) Payment Schedule

Payments to Cal Expo based upon percentages shown above will be made every six (6) days (48 hours in arrears) during the California State Fair. For example, the first payment to Cal Expo would occur on the sixth day of the State Fair and include ride and attraction sales for the first four (4) days of the State Fair. The final payment to Cal Expo would occur two (2) days after the conclusion of the State Fair and include ride and attraction sales for the final two (2) days of the State Fair.

b) Advance Sales

Cal Expo and Butler will cooperatively develop an advanced sales program with an advanced sale wristband promotion. Cal Expo will collect all proceeds from the promotion. Proceeds from the promotion shall be included in the ride and attraction grosses with payments distributed according to the commission schedule specified in

paragraph 3(a) above. Cal Expo and Butler shall agree, in advance, on the projected cost of developing and operating an advanced sales program. All actual costs of the program shall be deducted before any distribution of payments.

c) Photo Sales

On certain attractions that Butler provides on the premises there are photograph booths where photographs are sold to the public. For these photograph sales, Butler will pay to Cal Expo twenty-five percent (25%) of net sales.

d) Fuel Surcharge

In the event there is a substantial increase in the cost of fuel, the parties shall mutually agree on a fuel surcharge to be paid to Butler by Cal Expo. A substantial increase is defined as a 25% or more increase in fuel costs, averaged over a three (3)-year period.

4. CAPITAL IMPROVEMENTS

- a) Beginning in 2019, and each year thereafter that this Agreement is in effect, Butler shall invest \$275,000 for the purpose of providing improvements to the carnival area, or other areas that may be mutually agreed to by both parties, or modifications to increase customer satisfaction.
- b) For the term of this Agreement, capital improvements investments shall be made in accordance with the following schedule:

<u>Amount</u>	<u>Due Date</u>
\$275,000	July 31, 2019
275,000	July 31, 2020
275,000	July 31, 2021
275,000	July 31, 2022
275,000	July 31, 2023
275,000	July 31, 2024
275,000	July 31, 2025
275,000	July 31, 2026
275,000	July 31, 2027
275,000	July 31, 2028

Any unspent monies required for capital improvements for each year of this Agreement will be paid to Cal Expo no later than the due dates shown above.

Two hundred thousand dollars (\$200,000) must be spent on capital improvements approved in writing by Cal Expo and that meet the requirements of the State of California's generally accepted accounting standards for capital expenditures.

Seventy-five thousand dollars (\$75,000) will be spent on carnival improvements that enhance the customer experience. These items will remain in the possession of the Midway, but need to be approved by Cal Expo in advance. If in any year Cal Expo and Butler cannot agree to the use of these funds, the \$75,000 will be paid to Cal Expo at the close of the fair and used to purchase items Cal Expo deems appropriate to improve the overall customer experience in the Midway.

- c) Said carnival area improvement money may be retained from year to year, with Cal Expo's approval which will not be unreasonably withheld, for the purpose of future, larger capital improvements. In all circumstances when capital improvement money is not exhausted in any given year, it will be accounted and retained for usage in future years. Any unspent monies at the end of this agreement shall be paid to Cal Expo by October 1, 2028. With Cal Expo's approval, Butler may make capital improvements using capital improvement money required in this paragraph. Cal Expo and Butler shall meet at least annually to discuss the use of capital improvement monies and will mutually agree to the use of monies no later than January 31 of each year beginning with year two of this Agreement. If mutual agreement is not reached as to the designated improvements to be funded by these monies, Cal Expo's decision will prevail, however in no event shall such final decision-making power be exercised unreasonably.
- d) All capital improvements must be approved by Cal Expo in writing, in advance, and meet the test of the State of California's generally accepted accounting standards for capital expenditures.

5. PROMOTIONS AND MARKETING

- a) Each year on or before the last day of the State Fair, Butler shall pay to Cal Expo a sum of \$25,000 for promotional and marketing purposes. The marketing purpose of this contribution and the promotions which it supports shall in all respects include the midway and carnival rides and attractions in the State Fair's general advertising campaign.
- b) Butler and Cal Expo shall meet at least 120 days in advance of each State Fair to develop promotional and marketing campaigns.
- c) Carnival promotions approved by Cal Expo are an integral part of the State Fair's overall promotions and marketing campaign and, when combined with other State Fair elements, are intended to provide significant savings and perceived value to patrons attending the State Fair. Butler's participation and involvement in the development and implementation of these promotions will be reviewed annually and considered in Butler's ability to meet the requirement of the Agreement.

- d) Butler shall work closely with Cal Expo in developing and carrying out publicity and carnival promotions designed and specified to increase attendance and revenues at the State Fair.
- e) Butler shall supply a reasonable number of complimentary credentials to be used for promotional purposes and special guests. Butler and Cal Expo will mutually agree upon the number of complimentary tickets.
- f) Butler shall fully cooperate with Cal Expo in providing ride credentials to be used for sponsorships. The number of credentials and price will be mutually agreed upon.
- g) Butler shall participate in the State Fair's "Read and Ride" program which allows children to receive two (2) complimentary midway rides for every three (3) books they read.
- h) Butler shall participate in the State Fair's "Senior Days" program which allows senior citizens free rides on the Carousel and Giant Wheel on specific days during the State Fair.
- i) Butler shall participate in the State Fair's "Kids' Day" program which includes \$2 midway rides for children 12 years of age and younger on specific days (not to exceed two (2) days) during the annual State Fair. Kids' Day promotion on Cal Expo's part includes free admission for children 12 years of age and younger on specific days.
- j) Cal Expo's Use of Butler's Name and Trademarks: Butler acknowledges and agrees that Cal Expo may use Butler's name and Butler's registered trademark ("Butler's Trademark") in Cal Expo's promotion of the State Fair. Butler hereby grants to Cal Expo the non-exclusive, perpetual, royalty free right to use such trademark for such purpose. Cal Expo agrees that Butler shall have the right to approve the manner in which Cal Expo will use the Butler's Trademark. Each use by Cal Expo of Butler's Trademark shall require the prior written approval of Butler, which will not be unreasonably withheld. All requests for the approval of Butler shall be submitted in writing to Butler at the address appearing on the signature page of this Agreement. All requests for approvals shall be accompanied by the proposed content and artwork.
- k) Use of Cal Expo's Name and Trademarks/Approvals: Butler acknowledges and agrees that Butler, except in the fulfillment of obligations under this agreement, shall not use Cal Expo's or California State Fair's name or trademarks ("Cal Expo Trademarks") or any derivatives thereof, in the promotion of any event or for any other purpose without Cal Expo's prior written approval, which approval shall not be unreasonably withheld. All requests for the approval of Cal Expo for use of Cal Expo's Trademarks, for which consent is sought, shall be submitted in writing to Cal Expo. All requests for approvals shall be accompanied by the proposed content, photographs, artwork, names of the proposed and existing terms of sponsorship and licensing arrangements (except the sponsorship or licensing fees to be paid, but including all in-kind payments to be made

to Butler), and such other examples, prototypes and other information as Cal Expo may reasonably request.

- l) Cal Expo Ownership: Butler shall insert the appropriate copyright and trademark notices and the name of Cal Expo in all materials bearing the Cal Expo Trademarks, and shall immediately notify Cal Expo of any infringement of the Cal Expo Trademarks of which Butler has knowledge.

- 1) Cal Expo's Trademarks are and shall remain Cal Expo's sole and exclusive property, subject to the non-exclusive license granted to Butler under this Agreement. Butler shall not have the right to change the design, artwork, logo and/or other symbols, colors, typeface or phrases that are part of the Trademarks. All uses by Butler of Cal Expo Trademarks shall inure solely to the benefit of Cal Expo. Upon termination of this Agreement, Butler will immediately cease using the Cal Expo Trademarks and all materials bearing the Cal Expo Trademarks in any manner whatsoever. Cal Expo shall have the right to change the design, logo and/or other symbols or components of their respective Cal Expo Trademarks at any time during the term.
- 2) Butler shall not acquire any rights to or ownership interests in and to any of the Cal Expo Trademarks, except as specifically granted in this Agreement, and shall, upon request by Cal Expo or its designees, execute and deliver such documents as Cal Expo or its designees shall deem necessary to vest solely in Cal Expo all interest Butler may have acquired in any Cal Expo Trademarks.

- m) Butler Ownership: The Butler Trademarks are and shall remain Butler's sole and exclusive property, subject to the non-exclusive license granted to Cal Expo under this Agreement. Cal Expo shall not have the right to change the design, artwork, logo and/or other symbols, colors, typeface or phrases which are part of the Butler Trademarks. All uses by Cal Expo of the Butler Trademarks shall inure solely to the benefit of Butler. Upon termination of this Agreement, Cal Expo will reasonably promptly cease using the Butler Trademarks, but may continue to use printed materials which bear the Butler Trademarks. Butler shall have the right to change the design, logo and/or other symbols or components of its respective Trademarks at any time during the term, provided, however, that Butler shall bear the cost incurred by Cal Expo in changing the Butler Trademarks and reprinting any materials bearing the Butler Trademarks.

6. RIDES AND ATTRACTIONS

- a) Butler shall provide a selection of the latest and most popular rides, games, and food and beverage concessions that the carnival industry has to offer. Butler and Cal Expo shall meet annually to discuss Butler's business plan to make certain that Butler is providing the latest and most popular rides, games, and food and beverage concessions. All rides must appeal to family, teens, and adults.

- b) Butler shall submit annually, on or before June 15, for Cal Expo approval a complete list of intended State Fair rides and attractions listed by name of manufacturer, type, size, year of manufacture and riding capacity per hour. Included will be a complete list stating prices charged for each ride and attraction.
- c) Butler shall not change any prices without prior notification and written approval of Cal Expo. No attractions shall operate without charge without prior written approval of Cal Expo.
- d) The exact number and types of rides shall be approved by Cal Expo. Each ride must have a current permit to operate, issued by the California Division of Occupational Safety & Health, under the provisions of the California Labor Code section 7906 before they are placed in operation for public use at the California State Fair.
- e) Butler shall provide an electronic ticketing system which will be utilized on all rides. All credits will be in denominations deemed necessary by the parties for the operation of all carnival rides and attractions, games and concessions. Butler shall be responsible for paying for all value cards and wrist bands. Cal Expo shall be able to work with Butler on an inventory and accounting system all ride and attraction value cards and wrist bands in denominations necessary for the operation of all rides and attractions. The parties shall have the responsibility to provide accountability to the other party for all ride and attraction value cards, wristbands, including pre-sale credentials, according to sales procedure agreed upon by the parties. Butler and Cal Expo shall mutually agree upon credentials to be used each year.
- f) Butler shall ensure that all rides and attractions are kept clean and well maintained at all times.
- g) Butler shall ensure that all rides and attractions open on time.
- h) Butler shall provide all sellers, takers, boxes, and kiosks, with necessary electrical connections for power, for all rides and attractions provided by Butler at no cost to Cal Expo.
- i) Butler shall provide an electrical distribution system, including portable generators, for the entire carnival operation.
- j) Within the Premises as defined by this Agreement, Cal Expo shall not contract with any ride, attraction, game, special attraction or extreme ride operator without allowing Butler the right of first refusal when such ride, attraction, game, special attraction or extreme ride or something similar thereto, is being offered by Butler or the operator is unwilling to abide the same operational standards as imposed upon Butler in this

agreement. This provision does not grant any exclusive midway control to Butler but rather is intended to avoid duplication and the erosion of the Butler midway.

7. GAMES

- a) Unless otherwise authorized by Cal Expo, Butler shall not exceed 2,500 linear frontage feet of the latest popular games of skill. All games proposed to be used during the State Fair will be games of skill and submitted for approval to Cal Expo. Butler shall not operate games of chance; offer cash prizes; re-purchase prizes awarded in any game; or offer as prizes live ducks, chicks, or other live animals, soft drinks in other than plastic containers, sexually suggestive devices, knives, firearms, or any items which could be used as a weapon.
- b) Butler shall provide the latest and most popular merchandise in different sizes as game prizes.
- c) Butler shall submit annually, on or before June 15, a complete equipment list of intended State Fair games listed by name, type, size, year of construction or purchase. Included will be a complete list stating prices charged for each game and prizes to be offered. Cal Expo will inspect and approve the number, type and quality of games to be provided by Butler. Butler shall not change any prices or offer any prize without prior notification and written approval of Cal Expo. No game shall operate without charge for use without prior approval of Cal Expo.
- d) Fees payable for all games of skill, as well as complete playing instructions and rules, must be approved by Cal Expo. All games of skill must fully comply with State of California statutes on gambling and in every instance the game must involve only skill, must be fair, and must provide the player with a reasonable opportunity to win. Game prizes must be displayed for each category of win.
- e) Butler shall ensure that all games are kept clean and well maintained at all times.
- f) Butler shall ensure that all games open on time.
- g) Butler shall not permit children less than 12 years of age to participate in money games unless accompanied by an adult.

8. FOOD AND BEVERAGE CONCESSION STANDS

- a) Butler shall submit annually, on or before June 15, a complete list of food and beverage concession stands intended to be presented at the State Fair. Included will be a complete list of food and beverage prices by item, size and quality. At their sole discretion, Cal Expo will inspect and approve the number and type of food and beverage concession stands provided by Butler. Butler shall not change any prices, quality or size of food and beverage items without prior notification and written

approval of Cal Expo. No food or beverage will be provided without charge without prior written approval of Cal Expo.

- b) It shall be Butler's responsibility to notify all food and beverage licensees operating mobile stands under Butler's control that in order to operate with the State of California, a Certification of Structural and Equipment Compliance with the Mobile Food Preparation Unit Regulations must be obtained from the Sacramento County Health Department.
- c) All food and beverage concession stand operators, i.e., concession stand manager(s), must be trained and certified in Hazard Analysis Critical Control Points (HACCP).
- d) Butler shall ensure that all food and beverage concession stands are kept clean and well maintained at all times.
- e) Butler shall ensure that all food and beverage concession stands open on time.
- f) Butler, and any sub-concessionaries contracted by Butler, will be required to use "exclusive purveyors" at the request of Cal Expo. In contracting with said purveyors, Cal Expo agrees to use best efforts to require the use of national pricing standards, where applicable, for outdoor shows and fairs. By June 15 of each year of this Agreement, Cal Expo will notify Butler of the purveyor agreements; however, it is also the responsibility of Butler to inquire annually which types of exclusive purveyor agreements that may be in effect for each State Fair.
- g) The California Exposition & State Fair's Commercial & Concessions Rules and Regulations Handbook, copies of which can be viewed at www.castatefair.org are by this reference made a part of this Agreement. If internet access is not available, Butler may contact the Commercial Exhibits Office for a printed copy. Butler acknowledges having read and understood said Handbook, and agrees to comply with such Rules and any addenda as may be issued thereto.

9. PERSONNEL AND MANAGEMENT

- a) Butler shall provide personnel and management staff experienced in the operation and management of carnival rides, games, food and beverage concessions, and related services.
- b) Butler shall establish and maintain management philosophies, practices, and policies consistent with Cal Expo written and distributed standards.
- c) Butler must maintain one or more representatives who are authorized to take immediate action upon any request of Cal Expo at all times immediately before, during, and following each State Fair. Such persons must be identified to Cal Expo as Butler's authorized representative(s).
- d) Butler shall provide experienced personnel on-duty during all carnival operating hours.
- e) At all times during regularly scheduled hours of operation, Butler shall hire employees for each carnival ride, game, or attraction consistent with the number of attendants required by the manufacturer or independent safety consultant.
- f) Butler shall supply each person employed or associated with Butler a photo identification badge stating the individual's affiliation with Butler. The badge must be affixed in plain sight at all times.
- g) Employee Screening

Butler will not issue any type of identification badge applicable to employment during the State Fair until the person being employed or associated with Butler has completed the employee screening process described below.

Butler shall maintain a drug testing program at Butler's expense, for all carnival employees, including subcontractors working in the carnival operations and supervising employees working in the carnival operations and whose positions, job assignments, occupations, or responsibilities involve the operation or maintenance of rides and attractions.

Butler shall cooperate with Cal Expo to develop policies and procedures to ensure that all employees, including subcontractors, working in the carnival operations or supervising employees working in the carnival operations and whose positions, jobs, assignments, occupations, or responsibilities involve the operation of rides and attractions and/or where public safety is or may be an issue, are screened and drug tested before and during each State Fair. Such testing shall be at the expense of Butler.

Screening and drug testing policies and procedures will be mutually agreed to by Cal Expo and Butler annually on or before June 15.

At no time shall Butler allow carnival employees, including subcontractors working in the carnival operations and supervising employees working in the carnival operations whose jobs, assignments, occupations, or responsibilities involve the operation of rides and attractions and/or where public safety is or may be an issue, to continue to be employed or contracted in those positions, jobs, assignments, occupations, or responsibilities who do not satisfactorily meet the appropriate screening and/or drug test standards.

- h) Butler shall require that all employees and subcontractors are familiar with Butler's customer services policies and practices, Cal Expo customer service policies and practices, and receive appropriate training when deemed necessary by Butler and Cal Expo.
- i) Butler shall require of all employees that have regular contact with the public to be attired in clean, uniform clothing. All employees and appropriate subcontractors shall be uniformly dressed in clean, new attraction shirts with appropriate logo(s) and clean uniform dress slacks, trousers, or dress shorts. The shirts shall be kept clean and must be work tucked in at the waist. No cut-offs, rag bottoms, or rips in materials will be allowed. All carnival staff will be required to have neatly trimmed hair. Any facial hair must conform with a trim look. Cal Expo shall require the same policies of dress and decorum as set forth herein of all Cal Expo employees who have cause to be in or around the carnival areas or midway.
- j) Butler shall provide a list including full name, birth date, driver's license number and state, residential zip code, and other background information necessary from all employees and supervising employees, including rides, games and concession subcontractors working in the carnival operations during the State Fair. This list must be submitted by July 1 of each year of this Agreement with a revised list to be submitted prior to opening day of the State Fair each year. The list will be checked against the Megan's Law Sex Offenders file.

10. CUSTOMER SERVICE PROGRAM

Butler shall provide and maintain a customer service program including, but not limited to training and orientation for all employees and subcontractors regarding carnival operations and matters regarding the State Fair. Additionally, Butler will provide rest areas with covered seat areas, benches and landscaping; customer service trailer staffed with trained personnel; and policy and procedures regarding customer service matters.

11. OPERATING GUIDELINES

- a) Carnival Move-in, Set-up, and Move-out Period
 - 1) Cal Expo will make the premises available for move-in by Butler commencing at 8:00 a.m., eleven (11) days prior to the opening date of each State Fair. Cal Expo will cooperate with Butler to have other secured space available to stage carnival equipment that arrives prior to the move-in times specified herein.
 - 2) All rides, attractions, games, and concession stands shall be prepared to open and operate by 6:00 p.m. on the day before the opening day of each State Fair.
 - 3) Take-down of rides and attractions shall not begin until after the official closing of the State Fair unless approved by Cal Expo.
 - 4) Butler must vacate the premises no later than ten (10) days following each State Fair unless otherwise approved by Cal Expo. Cal Expo will cooperate with Butler to have other space available to store carnival equipment that has been removed from the premises after the move-out times specified above.
- b) Operating Period: The carnival shall be open and fully operational during all days and hours of the State Fair unless otherwise approved by Cal Expo. All rides, attractions, games, and food and beverage concession stands shall be in place and fully operational by the start of the State Fair and remain so for the duration of the State Fair.
- c) Butler shall continuously maintain the area around each ride, attraction, game, and concession stand in a clean, neat, and safe condition as directed by Cal Expo. During the hours of operation Cal Expo will have roaming janitorial service for the carnival area. At the conclusion of each State Fair, Butler shall clean up all areas used by Butler to the satisfaction of Cal Expo.
- d) Utilities: Water, sewer, and electricity are available within the carnival area on a limited basis without charge to Butler. Butler agrees to carry sufficient generator equipment to handle all midway requirements. Electrical cables shall be placed in such a manner as to provide safe passage of the public in the midway. Uncovered electrical cables shall not cross any public roadways or walkways. Cal Expo does not warrant sufficient water, sewer, or electricity being available within the carnival area to meet Butler's entire operating requirements.
- e) Commercial Exhibits: Butler is not permitted to locate commercial exhibits or direct sales booths in the carnival area without approval from Cal Expo.
- f) Novelties: Butler is not permitted to locate novelty stands in the carnival area. All novelty sales are handled under a separate contract and locations in the carnival area will be determined upon mutual agreement with Cal Expo.

- g) Parking: Trucks, equipment, trailers, offices, etc., that cannot be reasonably located in the carnival area must be parked in an area designated by Cal Expo.
- h) Ingress/Egress: Butler shall cooperate with Cal Expo to ensure that all vehicles authorized by Cal Expo will have proper access credentials for ingress and egress.
- i) Licenses and Taxes: Butler agrees to pay all lawful licenses, taxes, assessments, or charges which, at any time, may be levied upon any interest in this Agreement.
- j) Carnival Area Layout: On or before June 15 of each year of this Agreement, Butler shall prepare a diagram showing the layout and description of all attractions of any kind for Cal Expo's approval. Rides and attractions are to be numbered in such a manner to assist security, law enforcement, first aid, and other emergency service in finding a particular ride and location.
- k) Golf Carts: Golf carts will not be allowed on the fairgrounds, including the carnival area, at any time during public hours. Cal Expo requires that all carts use the perimeter service roads during operating hours. In the event of a special circumstance (i.e., health issues), written approval from Cal Expo is required for the use of a cart in the public areas during public/operating hours. In the event of an emergency carts may be used upon verbal approval from Cal Expo or at the direction of Cal Expo law enforcement officers or safety consultants.
- l) Automated Teller Machines (ATMs): Cal Expo shall place or provide a minimum of eight ATMs in the carnival area.
- m) Sales Centers: Butler shall provide a minimum of fifteen (15) Sales Centers for ride and game value credentials.
- n) Rest Area Canopies: Butler shall provide a minimum of thirteen (13) rest area canopies.
- o) Customer Service Center: Butler shall provide at least one Customer Service Center.
- p) Sponsorships: Butler may propose sponsorship arrangements for the carnival area. Such arrangements are subject to approval by Cal Expo. Such approval shall not be unreasonably withheld. Revenue from sponsorship arrangements will be shared equally with Cal Expo. Furthermore sponsorships for the carnival proposed by Cal Expo are subject to approval from Butler. Such approval shall not be unreasonably withheld. Revenue from such sponsorships shall be shared equally with Butler.
- q) Other Sales: Butler will not be allowed to book any straight sales, i.e., novelties locations, in the carnival area unless mutually agreed upon.

- r) Special Attractions: Cal Expo contracts on a regular basis with a very limited number of “special attractions” outside the confines of the carnival area. These “special attractions” have included arcades, specialty attractions, and/or extreme rides. Butler shall have the right to approve, which shall not be unreasonably withheld, any special attraction as defined in this paragraph which requires a permit issued by the California Division of Occupational Safety & Health. Butler will neither be responsible for nor share in the proceeds of any such “special attractions” located outside the carnival area. Nothing in this provision shall contravene Butler’s right of first refusal set forth in paragraph “j)” under RIDES AND ATTRACTIONS of this agreement.
- s) Recreational Vehicles (RVs): Limited RV parking and personal living trailers may be located on the perimeter of the carnival area. Lot 17 will be available for use by Butler on a fee basis. Cal Expo and Butler shall mutually agree upon the fee charged for RVs. An additional limited number of RV or trailer spaces may be provided in the other regular campgrounds at the same rate as charged to all other commercial vendors. No tent camping will be allowed. No camping, RVs, or trucks with campers will be allowed overnight in Cal Expo parking lots.
- t) Prohibitions: Butler will not bring into the carnival area, or operate thereon, any attraction which may be deemed by Cal Expo to be immoral, illegal, inappropriate, unsafe, or otherwise objectionable.
- u) Cal Expo shall seek the approval of Butler should opportunities arise to place special activities in the carnival area. Such approval shall not be unreasonably withheld.

12. SAFETY, INSPECTIONS AND MAINTENANCE

- a) Butler shall at all times maintain a safe environment for patrons, employees, exhibitors, subcontractors, and concessionaires. Butler shall maintain and make available to Cal Expo non-proprietary written safety policies and procedures including a policy on drug testing program for all carnival employees, contractors, and subcontractors and its policy regarding the Americans with Disabilities Act (ADA).
- b) Cal Expo will employ an independent safety consultant acceptable to Butler to perform safety inspections of rides, attractions, games, concession stands, and other related equipment and facilities in the carnival area as well as perform safety inspections related to areas outside the carnival area. Should Cal Expo and Butler not be able to mutually agree on a safety consultant, Cal Expo’s decision shall be final. Butler will reimburse Cal Expo seventy-five percent (75%) of the total cost of the independent safety consultant for each year of this Agreement.
- c) Butler shall establish procedures to ensure reasonable security of all rides, attractions, games, concession stands, and other related equipment and facilities when not in use.

- d) Maintenance procedures for carnival grounds, equipment, and attractions shall be established to include routine inspections by Butler's supervising personnel. Butler will maintain clean, attractive, brightly lit rides. Butler will make ride maintenance records available for inspection by Cal Expo upon reasonable notice.
 - e) Butler will ensure that the use of the assigned area for carnival operations is arranged to protect the public from dangerous conditions, equipment, and maintenance operations.
13. AMERICANS WITH DISABILITIES ACT (ADA): Butler, by signing this Agreement, assures Cal Expo that Butler, and each of Butler's lessees, sublessees, subcontractors, vendors, exhibitors, promoters, agents, and employees, if any, comply with the Americans With Disabilities Act ("ADA") of 1990 (42 U.S.C. 12101 et. seq.) and California Disability Access statutes including, but not limited to, the Unruh Civil Rights Act (Cal. Civ. Code §51 et. seq.), the California Disabled Persons Act (Cal. Civ. Code §54 et. seq.), and all relevant provisions of the Health and Safety and Business and Professions Codes, as well as all applicable regulations and guidelines issued pursuant to the ADA, namely the adopted Americans With Disabilities Act Accessibility Guidelines ("ADAAG") standards, known as the 'ADA Standards,' and all applicable regulations and guidelines issued pursuant to California law including Title 24 of California's Building Code. Failure to comply may subject Butler to civil liability and damages. Butler further agrees that this covenant to comply with state and federal disability access requirements continues for the duration of the Agreement.
14. LIQUIDATED DAMAGES

- a) Butler shall limit down time for all rides, games, and food and beverage stands. Barring a major power outage, legal impossibility, legal impracticability, or acts of nature, no more than five percent (5%) of the total midway operation can be inoperable at any given time during the hours the midway is open to the public, except as mutually agreed upon by Cal Expo and Butler.
- b) Butler shall inform Cal Expo when any ride, attraction, game, or concession stand becomes inoperable. Such notification shall be made immediately following knowledge by Butler of such information.
- c) Cal Expo has established liquidated damages to be imposed for inoperability if it exceeds the stipulation in paragraph 14-A.

Liquidated damages shall be assessed when Cal Expo's independent safety consultant determines that a ride(s) is inoperable due to the negligent preventative measures and practices of Butler. The independent safety consultant assessment will be reported to Cal Expo and will be used to impose the following penalties:

- 1) Up to \$2,000 per day of non-performance for each ride in Kids Park.

- 2) Up to \$3,000 per day of non-performance for each ride in the main midway.
- d) Barring an act of God, which is a circumstance beyond the reasonable control of Butler, legal impracticability or legal impossibility, if a ride or attraction proposed by Butler is not available at the State Fair, the above fees will not be assessed. The determination of Cal Expo to assess liquidated damages is final.

15. CAL EXPO SERVICES

At no charge to Butler, Cal Expo will furnish the following services:

- a) General illumination street lighting.
- b) Water from stationary hydrant locations (if and when requested and available).
- c) Reasonable police/law enforcement protection in the carnival area. Cal Expo, however, assumes no responsibility for any loss or damage to the property of Butler or to persons in the carnival area.
- d) Existing and available carnival area utilities including water, sewer, and electricity. Butler agrees to carry sufficient generator equipment to handle all carnival operational requirements.
- e) Reasonable janitorial roaming the carnival areas during the State Fair.
- f) Reasonable trash removal during the State Fair. Butler will be responsible for trash removal during move-in and move-out.

16. CHANGES IN OWNERSHIP

It is agreed and understood by both parties that the physical, on-site presence of the current owner or approved owner representative of Butler's carnival operation is a condition precedent to the performance of this Agreement. In the event that Butler decides to sell, transfer, or otherwise dispose of its ownership interest to a third party other than a Butler family trust or the current owners, for any reason, or cease to be active in management and operation of the carnival operations, Butler must immediately notify Cal Expo of such decision or occurrence in writing. After receipt of such notice, Cal Expo, at its sole option, shall have the right to terminate this Agreement by giving 30 days written notice to Butler.

For the purposes of this paragraph, a transfer of ownership by the current owners to a member or members of their immediate family will be approved by Cal Expo; provided that the "key person" selected by Butler to manage its operations is acceptable to Cal Expo. In the event that Cal Expo does not accept the "key person" as designated by Butler, Cal Expo reserves its right to terminate this Agreement by giving 30 days written notice to Butler.

Except as provided above, Butler shall neither assign, sublease, nor otherwise convey any interest, in whole or in part, of any sort in this Agreement to any person or persons, entity or entities whatsoever, without prior written consent and approval by Cal Expo. Any assignment of any interest in this Agreement, if approved by Cal Expo, shall be subject to all the terms of this Agreement.

17. INDEMNIFICATION: Butler shall defend, indemnify and hold harmless the State of California, California Exposition and State Fair, and their respective agencies, officers, directors, employees, agents and representatives (collectively Indemnitees) from and against any liability, claim, action, suit, loss, damage or expense (including, but not limited to, reasonable attorney's fees) for injury to persons or damage to property arising out of or connected with the performance of this Agreement, excepting only that caused by the negligence or willful misconduct of Indemnitees.
18. INDEPENDENT CAPACITY: Butler, and the agents and employees of Butler, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Cal Expo.
19. TERMINATION FOR CAUSE: Either party may terminate this Agreement and be relieved of any payments or further performance should the other party fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, either party may proceed in a manner consistent with available legal remedies.
20. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
21. PROPERTY DAMAGE: Cal Expo assumes no responsibility for any loss or damage to the property of Butler.
22. INSURANCE:
 - a) Butler shall maintain at its own cost and expense the following insurance coverages during the entire term of this Agreement.
 - 1) General Liability: Commercial general liability coverage, on an occurrence basis, with minimum limits of not less than \$5,000,000 combined single limits per occurrence. It shall cover damages for bodily injury, property damage, personal injury liability, and products and completed operations liability. The coverage shall list as the Additional Insured: "State of California, California Exposition & State Fair, its agents, officers, directors, employees, and servants are made additional insured but only insofar as the operations under this agreement are concerned."

- 2) Automobile Liability: Commercial automobile liability coverage, on a per accident basis, with limits of not less than \$1,000,000 combined single limits per accident for Butler's vehicles.
 - 3) Workers' Compensation: All employees of Butler shall be covered by workers' compensation insurance as required by law. Butler's workers compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the State of California in the event Butler employs any person, in any manner that is subject to the Workers Compensation Laws of California.
 - 4) Property: Butler shall maintain all-risk property insurance coverage on the buildings, improvements, fixtures, furnishings, equipment and all other personal property, including supplies of Butler on the premises.
- b) General Provisions
- 1) Butler shall submit insurance certificates to Cal Expo for approval by appropriate agencies prior to the commencement of operation on the premises and prior to the expiration of any policy, a new insurance certificate with renewal information shall be filed with Cal Expo. Butler shall furnish Cal Expo a certified copy of the policy within fourteen (14) days upon request.
 - 2) The coverage will not be cancelled or reduced in coverage without 30 days prior written notice to Cal Expo.
 - 3) Cal Expo shall not be responsible for the payment of any insurance policy premiums or assessments.
 - 4) The insurance coverages maintained by Butler shall be primary and any separate coverage or protection available to Cal Expo or any other additional insured shall be secondary.
 - 5) Butler agrees that the commercial general liability, automobile liability, workers' compensation, and property insurance coverages herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times prior to or during the term of this Agreement, Butler agrees to provide Cal Expo, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Cal Expo, and Butler agrees that no work or services shall be performed prior to the giving of such approval. In the event Butler fails to keep in effect at all times insurance coverages as herein provided, Cal Expo may, in addition to any other remedies it may have, take any of the following actions: (1) declare a material breach by Butler and terminate this Agreement; (2) withhold all payments due to Butler until notice is

received that such insurance coverage is in effect; and (3) obtain such insurance coverage and deduct premiums for same from any sums due or which become due to Butler under the terms of this Agreement.

- 6) Nothing herein shall be construed as limiting in any way the extent to which Butler may be held responsible for damages resulting from Butler's operations, acts, omissions or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Butler of liability in excess of such minimum coverage, nor shall it preclude Cal Expo from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Butler's indemnity obligations.
- 7) On a periodic basis, Cal Expo may review and modify the required insurance coverages as herein provided. Cal Expo shall notify Butler of any such modification to the coverage no less than sixty (60) days prior to the expiration of any current insurance policies for that coverage. Any required modification to the coverage shall be effective at the policy effective date of any replacement insurance policy for that coverage.

23. DRUG-FREE WORKPLACE CERTIFICATION: Butler will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b) Establish a Drug-Free Awareness Program to inform employees about:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a drug-free workplace;
 - 3) Any available counseling, rehabilitation and employee assistance programs; and
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- c) Every employee who works on the proposed Agreement will:
 - 1) Receive a copy of the company's drug-free workplace policy statement; and
 - 2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Butler may be ineligible for award of any future State agreements if Cal Expo determines that any of the following has occurred: Butler has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

24. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
25. Butler shall utilize the premises in an orderly manner and in compliance with all present and future applicable federal, state, and local statutes, ordinances, rules and regulations, including the proper possession of any applicable licenses or permits.
26. Cal Expo reserves the right to enter the premises to inspect, investigate, and survey the premises as deemed necessary by Cal Expo and the right to do any work of any nature in any location on the Cal Expo grounds necessary for its preservation, maintenance, and operation. Butler shall use the premises in such a manner so as not to cause an interference to Cal Expo.
27. The parties to this agreement agree that any action at law or suit in equity, relating to this Agreement or any provision therefore, shall only be instituted and maintained in a court of competent jurisdiction in the County of Sacramento, State of California. Each party hereto waives the right to change of venue.

28. If any legal action is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which the party may be entitled. If the party who commenced the legal or equitable proceedings dismisses the action or proceeding with or without prejudice, the defending or responding party shall be deemed the prevailing party for the purposes of recovery of attorney fees.
29. AUDIT: Butler agrees that Cal Expo, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right, upon reasonable notice, to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Butler agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Butler agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Butler agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896). All such activities shall be performed upon reasonable notice to Butler.
30. DISPUTE RESOLUTION:
- a) Mediation: In the event a dispute or disagreement arises in connection with an interpretation or meaning of a particular term or provision of this Agreement, and such dispute cannot be informally resolved by the parties, the parties agree to formally mediate the dispute prior to initiating litigation. The parties agree to equally share the costs associated with such mediation.
 - b) Venue in Sacramento: The parties to this Agreement agree that any action at law or suit in equity, relating to this Agreement or any provision thereof, shall only be instituted and maintained in a court of competent jurisdiction in the County of Sacramento, State of California. Each party hereto waives the right to change of venue.
 - c) In the event of litigation that is instituted by one party against the other, the parties agree that, in addition to any other remedies that this Agreement or the law may allow, the prevailing party in such litigation shall recover all reasonable costs, including attorney's fees.
31. BANKRUPTCY: Should Butler at any time after the execution of this Agreement file a voluntary petition in bankruptcy or be adjudged bankrupt either upon the voluntary petition or petition of creditors of Butler, or should Butler seek, claim, or apply for any right, privilege, remedy, relief or protection afforded by any statute or statutes of the United States relating to bankruptcy, or should it make an assignment for the benefit of its creditors, or should a receiver be appointed over, or should an attachment be levied and permitted to remain for a period of more than thirty (30) days following the levying of such attachment upon or against any right, privilege to this Agreement, then, and upon the happening of

either of said events, all interest, rights and privileges of the California Exposition and State Fair, whether then existing or contingent in, to, under, or pursuant to this Agreement, and except such of said interest, rights and privileges as shall have been theretofore validly assigned by Butler pursuant to the terms, covenants and conditions of this Agreement, shall at the sole option of Cal Expo cease, terminate and end upon thirty (30) days written notice to Butler from Cal Expo; provided, however, if said receiver be discharged within thirty (30) days after his appointment, Butler may, at any time within ten (10) days thereafter, notify Cal Expo thereof and resume the performance of this Agreement, and the same shall thereupon again become in full force and effect.

32. FORCE MAJEURE: Except as otherwise specifically provided for in this Agreement:

- a) All obligations shall be suspended while said party is prevented from performance by reason of causes not reasonably within the control of said party, such as riots, war, civil disturbances, floods, fires, legal impossibility, legal impracticability, acts of God or laws, provided, however, that performance shall be resumed within a reasonable time after such cause has been removed.
- b) This Agreement shall not be terminated by reason of any suspension due to the aforesaid causes.
- c) The term provided for in this Agreement shall not be extended by virtue of any suspension due to the aforesaid causes.
- d) In the event that Butler is unable to provide the services or a portion of the services covered by this Agreement, for any reasons specified in this paragraph, Cal Expo is duly authorized to provide such service or portion thereof, in such manner as it may deem proper.

33. DRONE POLICY: In order to protect the safety, security, privacy, and property interests of Cal Expo, its employees, agents, contractors, and the public, any operation or use of unmanned aircraft systems, remote or radio controlled model aircraft of all types, shapes, and sizes, or any other similar type devices (collectively "Drones") is prohibited on the premises of Cal Expo or within the Cal Expo's air rights, without prior written approval from Cal Expo. Please be advised that violation of this policy will result in immediate ejection from Cal Expo's premises and may subject the violator to a criminal trespass warning or arrest for those who fail to comply.

34. RIGHT TO TERMINATE: Cal Expo and Butler reserve the right to terminate this agreement subject to 30 days written notice to the Contractor if Cal Expo determines it cannot meet budgetary or financial obligations under this agreement. Contractor may submit a written request to terminate this agreement only if Cal Expo should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on Cal Expo's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or Cal Expo's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

35. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, and the California Exposition & State Fair Board of Directors, if required. Butler may not commence performance until such approval has been obtained.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date shown below.

BUTLER AMUSEMENTS, INC.

CALIFORNIA EXPOSITION & STATE FAIR

By: _____
Michael Brajevich
President

By: _____
Rick K. Pickering
General Manager/CEO

Date: _____

Date: _____

Address:
1006 Travis Blvd.
Fairfield, CA 94533

Address:
1600 Exposition Boulevard
Sacramento, CA 95815

Mailing Address:
PO Box 2210
Fairfield, CA 94533

Mailing Address:
PO Box 15649
Sacramento, CA 95852