

## CONTRACT

THIS CONTRACT ("Contract"), effective as of the date it is executed by the County Executive (the "Effective Date"), is by and between the **County of Cuyahoga, Ohio**, a county and political subdivision of the State of Ohio, on behalf of its Division of Children and Family Services, with a mailing address of 3955 Euclid Avenue, Cleveland, Ohio 44115 (hereinafter "County") and **Fun 'n' Stuff Amusements, Inc.**, an Ohio for-profit corporation, with an address of 649 East Highland Road, Macedonia, Ohio 44056 (hereinafter, "Provider"; County and Provider each a "Party" and, together, the "Parties").

### WITNESSETH

WHEREAS, the Cuyahoga County Division of Children and Family Services (DCFS) issued an Informal Request for Proposals, RQ #27864 (the "RFP"), for an indoor, family-friendly, handicap-accessible facility for its 2013 Adoption Event (the "Event"); and

WHEREAS, Provider responded to the RFP with its proposal dated June 12, 2013 (the "Proposal"), and

WHEREAS, DCFS desires to enter into contract with Provider to host the Event, as described in the RFP and the Proposal.

NOW, THEREFORE, the parties mutually agree as follows:

1. *Cost:* The maximum or total cost of this event shall not exceed \$7,040.00 (the "Maximum Contract Price"). Provider understands and acknowledges that the County will not pay amounts in excess of the Maximum Contract Price for services related to this Contract.

A. The Parties agree that the total cost for services under this Contract (the "Contract Price") shall be determined based on actual attendance at the Event on November 23, 2013 (the "Event Day"), at the rate of \$35.20 per attendee, inclusive of all costs and expenses. County shall notify Provider no later than 3:00 p.m., November 19, 2013, of the expected attendance at the Event. Provider and County shall confer prior to 4:00 p.m., November 21, 2013 to determine whether additional attendees are expected at the Event. The Contract Price shall be determined on the Event Day.

B. County shall pay Provider a non-refundable deposit of \$2,000.00 (the "Deposit") on or before September 15, 2013, to be credited to the Contract Price.

2. *Delivery of Service:* Provider shall host the Event on the Event Day. In consideration of the County's payment of the Contract Price, Provider shall provide the services described on Exhibit A on the Event Day. The Contract Price shall not increase after the Event Day. The Provider understands and agrees that no alcoholic beverages will be made available at this event.

3. *Contract Period:* This Contract will be effective from the Effective Date through the Event Day.

4. *Availability of Funds:* Payments for all services provided in accordance with the provisions of this Contract are contingent upon the availability of funds.

5. *Invoice/Payment:* The invoices and summary of charges are to be submitted to:

Fiscal Services Department  
Payment Processing  
Cuyahoga County Division of Children & Family Services  
3955 Euclid Avenue, Room 341-East  
Cleveland, Ohio 44115

The Provider shall submit its invoice within 30 days following the Event Day. DCFS will use best efforts to remit payment within 30 days from receipt of the invoice.

6. *Indemnification and Insurance:*

A. Insurance: Provider shall provide documentation of insurance as set forth on Exhibit B to a designated representative of the County within 30 days of the Effective Date.

(i) The insurance policies of the Provider required for this Contract shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

(a) Thirty (30) days prior notice of cancellation or material change;

(b) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

(ii) The insurance required for this Contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

(iii) These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.

(iv) The Provider shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

(v) The Provider shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

B. Indemnification: Provider shall indemnify, defend and hold harmless the County from and against any and all losses, in contract or in tort, arising, directly or indirectly, from, out of or in connection with: (a) any material breach of any representation or any warranty made by Provider in this Contract or in any other certificate or document delivered by Provider pursuant to this Contract; (b) the negligence of Provider or any other person performing services in connection with the Event on behalf of Provider; and (c) any breach by Provider of any covenant or obligation of Provider under this Contract. Provider acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify or defend Provider or any other party.

7. *Termination of Agreement:* The County may terminate this Contract by providing Provider notice within two weeks prior to the Event with no cost to the County other than the Deposit.

8. *Provider is an Independent Contractor:*

A. Provider agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Contract. Provider also agrees that, as an independent contractor, Provider assumes all responsibility for any federal, state municipal or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services purchased by County hereunder. Provider agrees that it is an independent contractor for all purposes including, but not exclusively limited to, the application of the Fair Labor Standards Act, the Federal Insurance Contribution Act, applicable provisions of the Internal Revenue Code, applicable provisions of Ohio Tax law, Workers Compensation Law and Unemployment Compensation Law.

B. The County shall not be obligated or liable to Provider or anyone else for the acts or omissions of those utilizing the Provider's premises for any purpose. The County shall not be obligated or liable hereunder to any party other than the Provider.

9. *Relationship of RFP, Proposal, and Contract:* In case of conflict between the terms and conditions of the RFP and the Proposal, the RFP will control; in the event of a conflict between the terms and conditions of the RFP and the Contract, the Contract will control.

10. *Governing Law and Jurisdiction.* This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Cuyahoga County, Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Provider hereby agrees not to challenge any provision in this contract, including this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.

11. *Notices.* Any notice to be given under this Contract by either party to the other may be effected either by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To the County: Sarah Denman, Social Service Worker 4  
Cuyahoga County Division of Children and Family Services  
3955 Euclid Avenue  
Cleveland Ohio 44115

To the Provider: Fun 'n' Stuff Amusements, Inc.  
661 East Highland Road  
Macedonia, Ohio 44056  
Attn: Bob Switalski, General Manager

12. *No Apparent Authority/Proper Approvals.* Provider recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

13. *Contract Interpretation and Construction.* In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract.

14. *Severability.* If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provision and the remainder of this Contract shall be and remain valid and binding as though such provision was not included herein.

15. *Applicable County Ordinances.* All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

16. *Public Records.* All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

17. *Electronic Signature.* The parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic

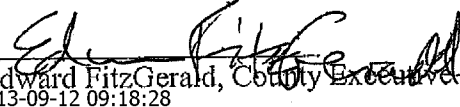
means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The parties also agree, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

CUYAHOGA COUNTY, OHIO

PROVIDER  
FUN 'N' STUFF AMUSEMENTS, INC.

Edward FitzGerald, County Executive

  
Edward FitzGerald, County Executive  
2013-09-12 09:18:28

Date: \_\_\_\_\_

  
Robert Bob Switalski, General Manager

Date: 7/29/13

## Exhibit A

### *Event Services*

The Ultimate package includes **Roller Skating, Rock Climbing, Laser Tag, Crazy Cars, Kid's World, Eurobungy, The Lost Tomb of Osiris Laser Maze, Highway 66 Bowling, and 25 video game tokens.**

The food package will include a buffet consisting of: **Hamburgers, Hot dogs, Chicken Tenders, Mini Sub Sandwiches, Rigatoni, Garden Salad, Fresh Fruit, Baked Beans, Potato Salad, Assorted Desserts and unlimited Fountain Drinks and Coffee.**

Fun 'n' Stuff will have food set up upstairs and downstairs, and their staff will supervise and refill the food areas as needed. The food will be served from 11:00 a.m. – 1:00 p.m. Fun 'n' Stuff will provide special wristbands for all the event attendees. These bands will also allow these attendees to receive the listed beverages at no additional charge at the snack bar from the time the buffet closes at 1:00 p.m. until the outing ends at 3:00 p.m.

Exhibit B

*Insurance Requirements*

- (a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Providers with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- (b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;  
\$1,000,000 personal & advertising injury;  
\$2,000,000 general aggregate;  
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.