

MEMORANDUM

TO: Tulsa Board of County Commissioners
FROM: Mark Andrus
DATE: February 4, 2016
SUBJECT: Approval of Three Year Facilities Lease Agreement
North American Midway Entertainment

On Thursday, February 4, 2016, the Tulsa County Public Facilities Authority approved a Three-Year Facilities Lease Agreement with North American Midway Entertainment.

Per the lease agreement between TCPFA and the Tulsa BOCC, all lease agreements in excess of two years require approval of the BOCC.

With this memo, I am requesting approval of this agreement (copy attached).

BOARD OF COUNTY COMMISSIONERS
TULSA COUNTY OKLAHOMA

By: _____
Karen Keith, Chairman

Attest:

County Clerk

Item for BOCC Agenda for Tuesday, February 16, 2016

Consider and vote to approve Long Term Facilities Lease Agreement (3 years) with North American Midway Entertainment

CARNIVAL MIDWAY AGREEMENT

Between

TULSA COUNTY PUBLIC FACILITIES AUTHORITY



And

NORTH AMERICAN MIDWAY ENTERTAINMENT



Date:

02/04/16

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TULSA COUNTY PUBLIC FACILITIES AUTHORITY
TULSA STATE FAIR
CARNIVAL MIDWAY AGREEMENT

This Carnival Midway Agreement (this "Agreement") is made and entered into this 4 day of February, 2016, by and between the Tulsa County Public Facilities Authority (the "Fair") and North American Midway Entertainment – Southeast, LLC (the "Contractor").

WHEREAS, this Agreement will serve the best interests of Fair.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

A. DEFINITIONS

1. "Action" includes, where the context allows, all legal, governmental, judicial and private actions, suits, proceedings and claims, including arbitrations, to enforce rights or remedies.
2. "Act of God" means an act, event, happening or occurrence due to the direct and immediate forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention.
3. "Amusement Ride" means any mechanical device, aquatic device, or combination of devices which carries or conveys passengers on, along, around, over or through a fixed or restricted course for the purpose of amusement, pleasure or excitement on the Midway.
4. "Annual Event" means the Annual State Fair Event held at the Tulsa State Fairgrounds located between East 15th Street and East 21st Street and between Yale Avenue and Louisville South in Tulsa, Oklahoma (the "Fairgrounds") during the month of September/October, starting the fourth Thursday after Labor Day and ending on the Sunday eleven (11) days thereafter. The number of days allocated for the Annual Event could be subject to change.
5. "Attraction" includes a show, maze, fun house, haunted house, jungle gym or any other enclosed entertainment device designed to provide amusement or excitement.
6. "Carnival Operations" includes, where the context allows, all Amusement Rides, Attractions, Games of Skill, Contractor Concessions, Support Equipment and the operation of those items by Contractor during the Annual Event.
7. "Concession" means a booth, trailer, or stand where food, beverage, or merchandise can be sold on a straight sales basis.
8. "Discretion" In any instance in this Agreement where the consent of Fair is requested or the exercise of the judgment or discretion of Fair is required, the granting or denial of the consent of Fair and the exercise of the judgment or discretion of Fair shall be within the sole and absolute discretion of Fair, and Fair shall not, for any reason or to any extent, be required to grant the consent, or exercise the judgment or discretion of Fair, or impose conditions to the consent in any particular manner, regardless of the reasonableness of the request for consent, or the conditions imposed, or the judgment or discretion of Fair. Whenever, in this Agreement, the consent of Fair to an inspection or other Contractor act is given, the consent shall only constitute the non-disapproval of the Fair and shall never be deemed to relieve Contractor of the strict performance of the obligations of Contractor as provided in this Agreement. To be effective, any consent of Fair must be in writing and signed by the Chief Executive Officer of Fair.
9. "Final Settlement" is the calculations of all monies received, due to the Fair and or Contractor as provided in this Agreement.

10. "Game of Skill" means any game, contest, competition, or sport whereby a participant purchases a chance to win a prize, and the chance to win a prize is determined by skill and not through chance, lottery, pool, or numbers game.
11. "Gross Receipts" means total revenue from all Carnival Operations at the Fair by Contractor less actual Oklahoma Sales and Tourism Taxes paid, unless otherwise defined.
12. "Including" or "Includes" when following any general statement, term, or matter, shall not be construed to limit the statement, term, or matter to the specific items or matters as provided immediately following the word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with respect to the word or the similar items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter. The rule of ejusdem generis shall not be applicable in this Agreement to limit a general statement, which is followed by or referable to an enumeration of specific matters similar to the matters specifically mentioned.
13. "Infield" is the area in the middle of the race track, located at the Fairgrounds.
14. "Master Lease" means that certain Lease dated February 22, 1983, between the Fair and the Board of County Commissioners of Tulsa County, Oklahoma, as now or hereafter amended.
15. "May" is a permissive word denoting an option.
16. "Straight Sale" means the entire charge paid for any and all items sold by any Contractor vendor.
17. "Person" includes any individual, natural person, estate of a decedent, corporation, company, limited liability company, partnership, syndicate, sole proprietorship, joint venture, unincorporated organization, association, joint stock company, trust, nominee trust, foundation, fund, institution, society, entity, party, union, club, or other group organized for any purpose, whether or not incorporated, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official, any liquidating agent for any of the foregoing, any trustee or personal representative in the capacity of trustee or personal representative, or any government (whether national, federal, Indian, state, county, city, municipal or otherwise, including any instrumentality, political subdivision, agency, body or department of any government).
18. "Pronouns" All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural and the plural shall include the singular.
19. "Support Equipment" means all electrical generation and distribution equipment, ticket booths, light towers, water distribution equipment, patron comfort furnishings, and the like, and as further defined below.
20. "Shall" is a mandatory word denoting an obligation to pay or perform.
21. "Sky Ride" is the gondola ride owned by Fair, located at the Fairgrounds.

B. GENERAL OPERATION REQUIREMENTS AND INFORMATION

1. Dates and Hours of Operation.

- a. Contractor shall provide a Carnival Operation as contemplated by this Agreement starting with the 2016 Annual Event that starts on September 29 (the "Opening Day") and ends on October 9. The carnival shall be in operation during the hours listed below; each term year the times will follow the same day of the week schedule with different dates:

Thursday, September 29, 5:00 p.m. – 11:00 p.m.
Friday & Saturday, September 30 & October 1, 11:00 a.m. – Midnight
Sunday, October 2, 11:00 a.m. – 11:00 p.m.
Monday – Thursday, October 3 – 6, 12:00 p.m. – 11:00 p.m.
Friday & Saturday, October 7 & 8, 11:00 a.m. – Midnight
Sunday, October 9, 11:00 a.m. – 11:00 p.m.

- b. No deviations by Contractor from the times above shall be allowed unless by written agreement with Fair. The Fair reserves the right to modify the dates and times in its discretion with 30 days notice to Contractor. Contractor may start move-in/set-up upon a mutually agreeable schedule.
 - c. All Carnival Operations shall be in place and ready to open by 12:00 p.m. (noon) on Opening Day having been inspected by State and/or Federal Regulatory Agency and approved for safe operation. No deviations from these times shall be allowed unless by written agreement with Fair.
 - d. Tear-down of Carnival Operations shall not start until after the end of the Annual Event, and all public is clear of the Carnival Premises. Tear-down shall be complete no later than seventy-two (72) hours after the end of the Annual Event (i.e. by 11:00 p.m. on Wednesday, October 12, 2016). No deviations from these times shall be allowed unless by written agreement with Fair.
2. Other Engagements. Contractor shall not play all or any part of the Carnival Operation of Contractor, at any place within 50 miles of the Fairgrounds other than the Annual Event during the term of this Agreement, without the express written consent of Fair.
3. Contract Administrator. The Contract Administrator on behalf of Fair for this Agreement shall be the Fair's Chief Executive Officer. The Contract Administrator may be changed at any time at the discretion of the governing body of the Fair
4. Credentials.
 - a. Fair shall admit, without charge, Contractor's personnel (as defined below) with numbered working photo identification badges. Photo identification badges will be provided by Contractor. Additional passes may be purchased by Contractor from Fair.
 - b. If credentials are found in the possession of other than proper personnel of Contractor, the credentials shall be deemed invalid by Fair and shall be immediately impounded by Contractor and surrendered to Fair.
 - c. Fair shall provide, at no cost to Contractor, an appropriate number of parking passes, which is mutually agreed upon ninety (90) days in advance of the start of the Annual Event. Parking passes will be valid in defined areas by Fair.
5. Carnival Premises.
 - a. Fair shall provide a paved midway lot (the "Carnival Premises") as shown on attached Exhibit "A". By taking possession of the Carnival Premises, Contractor shall be deemed to have accepted the Carnival Premises as suitable for the purposes of Contractor. The lot layout may be amended by mutual agreement.
 - b. Contractor shall position and operate all Carnival Operations and perform the work required under this Agreement solely within the confines of the Carnival Premises. Contractor's services shall be performed in the manner provided in this Agreement, and Contractor shall assure and be responsible for the performances of the Contractor's employees. Fair and its other contractors may sell any foods, goods, or merchandise in areas of the Fairgrounds other than the Carnival Premises during the Annual Event. Fair may also, in its discretion, operate or allow others to operate any rides, games, shows, or concessions owned by Fair on the date of this Agreement, or disclosed in Exhibit B hereto, in areas of

the Fairgrounds other than the Carnival Premises during the Annual Event. No commercial exhibits shall be permitted within the Carnival Premises without the prior written consent of the Fair.

6. **Amusement Rides, Attractions, Games of Skill, and Concessions.** Contractor shall operate Carnival Operations during the Annual Event and shall provide the following Amusement Rides, Attractions, Games of Skill and Contractor Concessions:

a. **Amusement Rides and Attractions.** The number, type and quality of Amusement Rides and Attractions provided by Contractor must equal a minimum of 60 rides; which includes a maximum of 25 kiddie, which shall be subject to the prior approval of the Fair. Contractor shall only provide modern, well-constructed and well-maintained Amusement Rides and Attractions which are of first quality. On or before June 1, of each contract year, Contractor shall provide to the Fair's Chief Executive Officer the following information for that year's Annual Event:

- i. Complete list and photograph within the last two years of each Amusement Ride and Attraction to be provided to the Fair by Contractor;
- ii. A record of the manufacturer's name, type, size, ride capacity per hour, serial number, and year of manufacture for each Amusement Ride and Attraction to be provided;
- iii. The suggested coupon quantity for each Amusement Ride and Attraction to be provided;
- iv. The rider capability requirements for each Amusement Ride or Attraction to be provided.

The suggested coupon quantity for each Amusement Ride and Attraction is subject to the review and prior approval of the Fair's Chief Executive Officer.

b. **Games of Skill.** Contractor shall provide its latest and most popular Games of Skill. Total number of Games of Skill shall not exceed seventy (70). All Games of Skill provided shall be uniform in appearance, including canvas which is clean and free of obvious tears and holes. On or before June 1, of each contract year, Contractor shall deliver the following information to the Fair's Chief Executive Officer:

- i. Complete list, photograph and description of each Game of Skill to be provided;
- ii. The suggested price or charge for participating in each Game of Skill to be provided;
- iii. Playing instructions and rules for each Game of Skill to be provided.

All charges, instructions and rules are subject to the review and prior approval of the Fair's Chief Executive Officer. Any changes to the original list of Games of Skill shall be submitted to the Fair's Chief Executive Officer no later than September 20, annually. Any changes to the list of Games of Skill are subject to the prior approval of the Fair's Chief Executive Officer. All instructions, rules and prizes shall be conspicuously displayed at each Game of Skill booth, and in plain view of the public. Such instructions or rules shall clearly indicate the size and quality of prizes offered for each category or win, and shall be of a professional quality grade.

Game prizes shall be displayed for each category of win. No conversion charts, score cards, or punch boards shall be used to play any Game of Skill. Contractor shall not offer prizes such as live ducks, chicks, or other live animals (except goldfish), sexually suggestive material, knives, firearms, any item that could be used as a weapon, or any other items that are found objectionable by Fair. Prizes may not be displayed that cannot be won. All Games of Skill shall comply with Oklahoma gambling statutes. All Games of Skill shall be fair and shall provide the player with a reasonable opportunity to win. No increase or decrease in price or change of rules shall be allowed without obtaining the prior

written consent of Fair. Contractor shall comply with the Oklahoma Amusement and Carnival Games Act, Title 3A, Oklahoma Statutes 2011, Sections 501 et. seq., as amended.

No bozo-type operations, arcades, or build-up games defined by the Oklahoma statutes or rules of the Oklahoma Department of Labor will be allowed at any Annual Event. Contractor is further prohibited from operating any games or schemes of chance, or other illegal gambling activities prohibited by Oklahoma statutes or the rules promulgated thereunder.

- c. Concessions. Contractor shall provide an appropriate number and mix of its latest and most popular food and beverage Concession stands to be located on the Carnival Premises. Other types of Concession stands shall be considered on a case by case basis. Contractor shall provide a minimum of twenty (20) food and beverage concession stands, unless otherwise mutually agreed upon by both parties. Concessionaires shall charge reasonable prices and the prices are subject to review and prior written consent by Fair. Fair may limit what goods may be sold or distributed and may inspect and sample Concessionaire's food and beverage items or may conduct other tests to determine if the goods being sold or distributed meet quality standards. Liquor and beer (strong or otherwise) sales are prohibited. On or before June 1, of each contract year, Contractor shall deliver to the Fair's Chief Executive Officer the following information:
 - i. Complete list and photograph of each Concession to be provided;
 - ii. The name and address of the owner and operator of each Concession to be provided;
 - iii. The price or charge for each Concession item to be sold at each Concession to be provided.

The Concessions, items for sale, and prices or charges for each item are subject to the review and approval of the Fair's Chief Executive Officer. Any changes to the original list of Concessions shall be submitted to the Fair's Chief Executive Officer no later than September 20, annually. Any change to said list of Concessions shall be subject to the prior approval of the Fair's Chief Executive Officer.

All Concessions must meet Fair quality and standards, be clean, attractive, and well-maintained. Operators must maintain a clean area around their stands, booths and/or trailers.

All Concessions shall be operated and maintained in accordance with the rules and regulations of Fair, County of Tulsa, and State of Oklahoma. Contractor shall bear the sole cost and responsibility for obtaining any required licenses for Concession operations.

Contractor acknowledges that the Fair is obligated to comply and perform the terms of an existing contract with Great Plains Coca-Cola Bottling Company (hereafter known as "Coke"), in which Coke is granted exclusive pouring rights for all non-alcoholic beverage sales at each Annual Event. Contractor warrants and represents that all the Contractor's Concessionaires will honor the agreement between the Fair and Coke, or any other corporation, person or entity subsequently granted exclusive pouring rights by the Fair. Contractor shall obtain the written agreement and acknowledgement of all its Concessionaires that all non-alcoholic beverages sold at each Annual Event, and all non-alcoholic drink cans, containers, cups, syrup and CO2 shall be purchased through Coke, which agreements shall be provided to the Fair prior to the first day of each Annual Event. Contractor further agrees that all other non-alcoholic beverage company logos shall be completely covered by stickers or signs provided by Coke. Contractor and its Concessionaires also agree to comply with any recycling programs implemented by the Fair.

7. Customer Service Program. Contractor shall provide a minimum of two (2) guest relations and information booths. Fair may participate in the staffing of the guest relations booths. The booths shall be open and staffed by Contractor during all hours of Contractor's operation. Contractor shall provide the following items: rest area canopies, seating, picnic tables, and shrubbery as landscaping throughout the Carnival Premises; the minimum number of each defined in the Contractor's Proposal, as hereinafter defined.

8. Carnival Operations Diagram.

- a. On or before June 1, in each year of this Agreement, Contractor shall provide Fair with a preliminary diagram showing the proposed location of all Carnival Operations (the "Carnival Operations Diagram").
- b. The Carnival Operations Diagram shall be accompanied by a complete list of all Carnival Operations.
 - i. By July 1, in any given year of the Agreement, Contractor shall provide a final diagram and description/price lists that shall not be materially altered after they have been provided and consented to in writing by Fair. All locations shall receive the prior written consent of Fair and may vary from year to year.
 - ii. Any changes once Carnival Operations Diagram has been confirmed, must be agreed upon in writing.

9. Camping Space and Parking.

- a. A limited number of camping spaces shall be available for Contractor's personnel use at the Fair's standard charges for a mutually defined time period during each Annual Event. Spaces are available on a first come, first served basis and shall be paid through Final Settlement. No refunds shall be issued. All pets shall be kept within living quarters and such living quarters shall be maintained in a clean and sanitary manner. A minimum number of spaces will be reserved for Contractor's use, which include:

60 spaces allocated in the Infield.

- b. Any Camping Space located in the Infield shall have a fence and fence screening provided by Contractor.

10. Safety and Inspections.

- a. Contractor shall keep its Carnival Operations and Support Equipment in a good and safe state of repair and upkeep in accordance with the applicable manufacturers' or ASTM standards.
- b. Fair may employ independent safety consultant(s) to perform safety inspections of Amusement Rides, Attractions, Games of Skill, Concessions, Support Equipment, and facilities in the Carnival Premises as well as perform safety inspections related to areas outside the Carnival Premises. The independent safety consultant shall report to, and take direction from, Fair.
- c. Contractor shall not permit any Amusement Ride, Attraction, Game of Skill, Concession or Support Equipment, or facilities to operate unless the Amusement Ride, Attraction, Game of Skill, Concessions or Support Equipment, or facilities are inspected and approved for operation or public use by the Oklahoma Department of Labor and/or any other regulatory agency and, if employed, the independent safety consultant. The independent safety consultant shall provide safety inspections throughout the duration of each Annual Event. Safety inspections shall be documented in writing stating what was inspected, when, by whom, and the findings.
- d. Contractor shall cooperate with the Oklahoma Department of Labor to facilitate that each Amusement Ride and Attraction has posted on it a special inspection certificate noting that the Amusement Ride or Attraction was inspected after being installed/erected at the Tulsa State Fair and that such Amusement Ride and Attraction is deemed by the Oklahoma Department of Labor to be safe to operate. In addition, Contractor shall give Fair a copy of all Oklahoma Department of Labor inspection records and/or certificates as soon as practicable after all such inspections have been completed by the Oklahoma Department of Labor.

- e. Contractor shall grant Fair reasonable access to Contractor's midway office and guest relations booths during normal operating hours to permit Fair to inspect all relevant ride and game maintenance and inspection records, employee safety training records, customer complaints and incident reports, and any health department or regulatory agency violations. If third parties have owned or operated the Amusement Rides or Attractions during this period, details of such circumstances shall be provided.
- f. All safety and restraint systems specified by the Amusement Ride or Attraction manufacturer shall be in place and in proper working order at all times on all Amusement Rides and Attractions. Service manuals and updated service bulletins shall be available for inspection by Fair for each Amusement Ride and Attraction.
- g. Contractor shall use best efforts to ensure that the use of the Carnival Premises for Carnival Operations is arranged to protect the public from dangerous conditions, equipment, and maintenance operations.
- h. In addition, Contractor will be required to provide its own independent ride safety inspector(s). Contractor's inspector(s) must be licensed by NAARSO, Class 2 or 3. Contractor's inspector(s) will be required to be on the premises during all operating hours of the Carnival Operations.

11. Liquidated Damages.

- a. Contractor shall limit down time for all Amusement Rides, Attractions, Games of Skill, and Concessions. Barring major power outage or Acts of God, no more than two (2) Amusement Rides or Attractions, two (2) Games of Skill, or one (1) Concession shall be inoperable at any time on the Carnival Premises.
- b. Contractor shall inform Fair when any Amusement Ride, Attraction, Game of Skill, or Concession becomes inoperable. Such notification shall be made immediately following knowledge by Contractor of such information.
- c. Except for major power outage or Acts of God, no excuses shall be accepted by Fair for an Amusement Ride, Attraction, Game of Skill, or Concession not being fully operational by 5:00 p.m. on Opening Day.

12. Oklahoma Amusement Ride Safety Law. In addition to the inspection procedures provided in this Agreement, Contractor shall strictly comply with the Oklahoma Amusement Safety Act (Title 40, Oklahoma Statutes 2011, Sections 460-469, as amended).

13. Oversight Contractor. Fair reserves the right to retain an independent oversight contractor(s) to assist in oversight of Carnival Operations. If Fair retains an independent oversight contractor, the cost of the oversight contractor shall be borne by Fair, and Contractor shall cooperate fully with the independent oversight contractor(s). The independent oversight contractor may be in addition to the independent safety consultant contemplated by paragraph 10.

14. Insurance.

- a. Contractor shall provide and maintain through each Annual Event automobile, comprehensive general liability insurance coverage, including product liability, in the amount of at least ten-million dollars (\$10,000,000) single limit for bodily injury and property damage. Or as an alternate, a split limits policy with minimum limits of one-million dollars (\$1,000,000) bodily injury per person, one-million dollars (\$1,000,000) bodily injury per occurrence, and one-million dollars (\$1,000,000) property damage per occurrence is required. The insurance provided under this paragraph shall be obtained from a domestic company. Contractor shall provide to Fair a certificate of insurance and a copy of the insurance policy and all riders or amendments. All insurance that Contractor is to obtain under this paragraph shall name Fair as an additional named insured and shall be primary and non-contributing with any insurance that may be carried by Fair. The insurance certificate required by this paragraph

shall be an original and shall be delivered no later than August 15, in each year. The insurance shall be in effect during the Annual Event, the move-in/set-up period, and the tear-down period.

- b. If applicable, Contractor shall also provide proof of worker's compensation insurance and unemployment insurance in such amounts required by the laws of Oklahoma.
15. Signage. Any decoration or signage publicly displayed or affixed to Fair property shall be consented to in writing by Fair, which shall not be unreasonably withheld. Further, Fair may reject any signage displayed by Contractor that Fair reasonably deems inappropriate. All fence screening graphics shall be customized for Fair and mutually agreeable.
 16. Appearance of Carnival Operations. All Carnival Operations shall be neatly painted, clean, and in good repair. All Amusement Rides, Attractions, Games of Skill, and Concessions shall be skirted. All electric signage and lighted decorations shall be in good working order and have no burned out bulbs or elements. Awnings shall have a clean and professional appearance and have no holes or tears. All stock areas, back of rides, and any area not accessible to public should have professional fencing and fence screening. Failure to meet appearance standards may result in closure.
 17. Contractor Personnel and Facilities. Contractor shall provide sufficient personnel, authorized and legal to work in the United States of America, to service the public with respect to Carnival Operations. All personnel of Contractor shall wear numbered photo identification badges, be clean, well groomed, and neat in appearance during the Annual Event. At a minimum, during the Annual Event, all personnel who provide service to the public shall be required to wear matching shirts tucked in at the waist, and their hair and facial hair (if any) shall be neatly groomed. The appearance of personnel who provide service to the public during the Annual Event shall be subject to inspection by and reasonable consent of the Fair. All personnel of Contractor shall maintain their conduct at the highest standards. No personnel who provide service to the public may smoke or consume alcoholic beverages or be under the influence of alcohol or illegal drugs while on duty. Smoking by personnel who are on break shall be permitted in designated areas only. Contractor assumes the full responsibility for the character, acts, and conduct of all its personnel. Contractor shall remove from the Carnival Premises any personnel as requested by Fair.
 18. Employee Screening and Drug Testing.
 - a. Contractor shall maintain a drug testing program including policies and procedures to ensure that all employees working in the Carnival Operations or supervising personnel working in the Carnival Operations and whose positions, jobs, assignments, occupations, or responsibilities involve the operation of Amusement Rides and Attractions and/or where public safety is or may be an issue, are randomly screened and drug tested throughout the year.
 - b. All costs related to screening and drug testing for the Carnival Operations shall be borne by Contractor.
 - c. At no time shall the Contractor allow personnel working in the Carnival Operations or supervising personnel working in the Carnival Operations, and whose jobs, assignment, occupations, or responsibilities involve the operation of Amusement Rides, Attractions and/or where public safety is or may be an issue, continue to be employed or contracted in those positions, jobs, assignment, occupations, or responsibilities who do not satisfactorily meet the appropriate screening and/or drug test standards.
 19. Posting of Prices and Rules.
 - a. All Games of Skill, Amusement Rides, and Attractions shall post prices in the manner prescribed by Fair on professionally printed signs to be consented to by Fair. No hand written signs are allowed. In addition, Games of Skill shall post complete game rules and instructions. Such instructions shall clearly indicate the size and quality of prizes offered for each category of win and shall be consented to by Fair. The price for admission, product, or play posted at the outside of all Games of Skill,

Amusement Ride, or Attraction shall be the entire charge made to the public for all Games of Skill, Amusement Ride, or Attraction.

- b. Each Amusement Ride and Attraction shall be posted with an information sign that clearly communicates to the public appropriate instructions and warnings regarding safe use of the Amusement Ride or Attraction. The information listed shall include instructions for persons with disabilities and parents of minor children, as well as limitations or exclusions due to age, weight, height, or other physical condition.
 - c. Concessions shall charge Fair's patrons the rates posted conspicuously on the booth. Such rates shall have the prior written consent of Fair.
 - d. All such signs shall be displayed in a conspicuous place and shall be attached to the applicable Amusement Ride or booth and placed within the confines of the allotted space only. Signboards cannot be placed outside the space in a walk way.
 - e. Each Amusement Ride, Game of Skill, Attraction and Concession shall be plainly and clearly numbered.
 - f. The posting or distribution of posters, handbills, and other advertising matter is prohibited.
20. Closing of Carnival Operations. The Fair, at its sole discretion, may close all or any part of the Carnival Operations if Fair believes the best interest of Fair is to do so. Fair shall have the authority to order the removal of any Amusement Ride, Attraction, Game of Skill, Concession, or Support Equipment that Fair, in its sole discretion, deems objectionable.
21. ATM and Vending Machines. Contractor shall not place or provide ATM or Vending machines in the Carnival Premises. Fair may provide ATM and Vending machines in the Carnival Premises at no cost to Contractor at mutually agreeable locations.
22. Fuel Restrictions. The use of propane outdoors and in any manner shall meet all State/Federal regulatory guidelines. Propane tanks shall be located on the outside of portable booth structures. Open flame grills or smokers, if used, are to be placed on the outside of the temporary structure. The use of charcoal is prohibited.
23. Trash/Garbage Disposal and General Sanitation Requirements.
- a. Contractor shall keep the entire Carnival Premises area clean during all hours of operation. Contractor shall surrender the Carnival Premises, including storage areas, camping spaces, areas between and surrounding Amusement Rides, Attractions, Games of Skill, Concessions, and the perimeter of the Carnival Premises, in good and clean condition. If Contractor fails to return the Carnival Premises in the required condition, Contractor shall reimburse the Fair the cost of restoring the Carnival Premises to the required condition, if not restored by 2:00 p.m. on the Wednesday after the end of the Annual Event.
 - b. Maintenance procedures for Carnival Premises and Carnival Operations shall be established to include routine Contractor inspection by supervising personnel with such frequency to ensure no unsightly conditions (i.e., litter, trash accumulation, marred surfaces of any kind on Contractor or Fair property within the Carnival Premises) shall exist without attempt to correct the problem within a reasonable period of time. Reasonable time shall be defined according to the severity of the condition. Contractor shall maintain clean, attractive, brightly lit Amusement Rides, Attractions, Concessions, and Games of Skill.
 - c. Contractor will be required to provide trash receptacles; the quantity and placement shall be mutually agreeable. Contractor shall provide trash bags and shall break down all cardboard. Contractor shall place cardboard and filled trash bags in roll-off containers provided by Fair. Fair shall provide pick-up of trash from roll-off containers only.

24. Handling of Grease. Food service operators cooking with grease shall provide their own grease mats and storage containers and shall remove and dispose of grease as required by applicable law. Grease shall not be disposed of in garbage receptacles or drain outlets.
25. Greywater. No greywater shall be allowed to spill on the Carnival Premises and RV parking areas. Each Concession unit shall store its greywater and greywater shall be removed and disposed of after hours as required by applicable law. Greywater from permitted Amusement Rides (i.e., bumper boats) shall be pumped out to change or dispose. Water shall not be allowed to free drain from Amusement Rides, Attractions, Games of Skill, or Concessions.
26. Security.
- a. Fair shall provide security services as reasonably needed for the Carnival Premises. The hours and type of security personnel shall be established by Fair and Contractor. Contractor shall only use personnel from Fair's security staff, local police and Tulsa County Sheriff approved in writing by Fair.
 - b. Nothing in this Agreement shall prevent either Fair or Contractor from requesting additional assistance if an emergency occurs on the Carnival Premises.
27. Utilities.
- a. Water. Reasonable water service is available on a limited basis and may be furnished to the Carnival Premises at no charge if and when requested and available. Contractor may be charged if Contractor uses water for any Amusement Rides, Games of Skill, Attractions (i.e., bumper boats), and similar rides.
 - b. Sewer. Sewer access is available on a limited basis, primarily for food and beverage Concessions, at no charge. Where sewer access is not available, holding tanks are required and Fair shall allow access to a pumping service at Contractor's expense.
 - c. Cables and Hoses. All cables and hoses that cross public walkways and that are otherwise exposed to public view shall be protected and covered with consistent matching equipment; zip tied when appropriate, bundled, and organized.
28. Payments, Prices, Tickets, and Coupons for Amusement Rides and Attractions.
- a. All Amusement Rides operated on the Carnival Premises shall work on a specific ticket or coupon basis requiring a specified ticket or coupon count, which number of tickets or coupons shall be conspicuously posted at each Amusement Ride and Attraction location. Individual Amusement Ride and Attraction tickets shall be priced at an established value defined and mutually agreed upon by both parties ninety (90) days prior to the start of the Annual Event. Any change of prices must be approved in advance by Fair. All Amusement Rides shall be made available to those who purchase discount ride coupons or wristbands.
 - b. Fair shall furnish all necessary tickets, wristbands, and/or coupons for all Amusement Rides and Attractions. Contractor shall furnish all personnel to sell such tickets and coupons. Contractor shall provide a ticket or coupon taker at each Amusement Ride and Attraction, be responsible and accountable for all tickets and/or coupons collected at each Amusement Ride and Attraction, and shall comply with all reconciliation and audit procedures prescribed by Fair. Tickets shall be torn or placed in a locked container upon acceptance by Amusement Ride and Attraction operator. All ticket functions undertaken by Contractor, including ticket taking, weighing, and destruction of tickets, shall be supervised by Fair.
 - c. Contractor shall weigh valid coupons/tickets accepted at the Sky Ride, and reimburse total value/quantity during Final Settlement.

C. CONSIDERATION

1. Gross Receipts.

- a. In addition to all other payments and reimbursements required to be paid to Fair by Contractor as provided in this Agreement, Contractor shall pay to Fair forty-five percent (45%) of the Gross Receipts from the operation of each Amusement Ride and Attraction.
- b. Payment of the percentages due to Fair by Contractor from Amusement Rides and Attractions shall be made daily to Fair after the first day of operation using procedures required by Fair, in its discretion. Final payment shall be made not later than 5:00 p.m. on the day after the end of the Annual Event; if this timeline changes it must be mutually agreed upon.
- c. At the time of final reconciliation, the total Gross Receipts from Amusement Rides and Attractions is calculated by determining the face value, less applicable sales tax, of all tickets issued to Contractor less the number of tickets returned by Contractor to Fair. All tickets issued to Contractor shall be sequentially numbered. Wristbands for special promotions shall be accounted for in the same manner as tickets.
- d. In the event the Fair determines in its sole discretion to establish a pay-one-price promotion Contractor agrees to cooperate with the Fair with respect to any such pay-one-price promotion. Contractor further agrees with respect to any such pay-one-price promotion to pay to the Fair a sum equal to the amounts below:

Total POP Amount	Gate Amount Allocation	Fair Percentage	Contractor Percentage
\$25.00 per person	\$5.00	45%	55%
\$30.00 per person	\$5.00	45%	55%
\$35.00 per person	\$5.00	45%	55%
\$70.00 (per Mega Pass)	\$10.00	45%	55%

- e. In the event the POP Amount is different than defined above, the Gate Amount Allocation will be mutually agreed upon by both parties.

2. Concessions.

For all Concessions, Contractor shall pay to Fair one-hundred dollars (\$100.00) per front foot including hitches, but excluding awnings; for center Concessions, if booth opens to more than one (1) side, such booth will be measured by the combined length of one (1) long and one (1) short side of the booth including hitches, but excluding awnings, Contractor shall pay to Fair one-hundred dollars (\$100.00) per foot measured by the combined length of one (1) long and one (1) short side of the booth including hitches, but excluding awnings. Fair personnel shall measure the booths in the presence of Contractor's designee. However, if Contractor designee fails to appear when an appointment to measure Concessions has been agreed upon, Contractor shall accept Fair's measurements.

3. Games of Skill.

For all Games of Skill, Contractor shall pay to Fair seventy-five dollars (\$75.00) per front foot including hitches, but excluding awnings. If booth opens to more than one (1) side, such booth will be measured by the combined length of one (1) long and one (1) short side of the booth including hitches, but excluding awnings. Fair personnel shall measure the booths in the presence of Contractor's designee. However, if Contractor designee fails to appear when an appointment to measure Games of Skill has been agreed upon, Contractor shall accept Fair's measurements.

4. Advertising, Marketing, Publicity, and Promotion.

- a. Contractor shall work closely with Fair's designated media and corporate sponsors for each promotion in developing and carrying out publicity and carnival promotions designed to increase attendance and revenues at the Annual Event. Promotions shall include a minimum of three (3) special price (discount) days to be established by Fair and Contractor in writing.
- b. In each year of this Agreement, the pre-sale program and promotion package shall be established in writing by Fair and Contractor.

5. Special Events. From time-to-time, the Fair may require the Contractor to provide free rides to certain specified groups of patrons designated by Fair during certain specified hours on certain specified day(s) for promotional or other purposes. Dates, times, and number of free rides to be provided will be mutually agreed upon by Fair and Contractor in writing.

6. Penalty for Late Payment. With regard to other payments due Fair and invoiced by Fair, payment shall be tendered to Fair within thirty (30) days of the date of Fair's invoice. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. Fair shall start to assess late payment charges on the unpaid balance(s) due, on the day after payment is due, at the rate of one and one-half percent (1-1/2%) per month.

D. TERMS AND CONDITIONS

1. Term. This Agreement shall become effective upon execution and shall terminate, without notice, on October 30, 2018, unless earlier terminated pursuant to paragraph D.2, below. Upon the mutual agreement of both parties, this Agreement may be renewed for a maximum of two (2) additional three (3) year terms upon mutually agreeable terms. Failure of Fair to notify Contractor of the intent of Fair not to renew this Agreement does not constitute automatic renewal. Prior to renewal, the Fair and Contractor shall meet and negotiate a new Agreement containing terms that are mutually agreeable.

2. Payment.

- a. Contractor shall pay to Fair on or before March 31, prior to each Annual Event the guaranteed sum of one-million dollars (\$1,000,000.00) in cash or certified check. This amount is a guaranteed minimum per Annual Event, and will be credited against all Gross Receipts consideration paid by Contractor.
- b. Contractor shall pay to Fair upon execution of this Agreement, as a one-time incentive for entering into this Agreement, the sum of one-million dollars (\$1,000,000.00) in cash or certified check.

3. Primary Contact and Negotiator. Tony Diaz will act as the primary contact and negotiator on behalf of the Contractor.

4. Presence of Contractor. The physical on-site presence of the current owner principal of Contractor who is Tony Diaz, Danny Huston, or other representative of Contractor's carnival company approved by Fair in writing is a material condition to this Agreement. If the controlling interest in Contractor's carnival company is sold, transferred, assigned (by merger, or otherwise) to a third party, or the current principals of Contractor, for any reason, cease to be active in the management and operation of Contractor's carnival company at any time during the term of this Agreement, Contractor shall notify Fair of the change and Fair may terminate this Agreement by giving thirty (30) days written notice to Contractor.

5. Compliance with Regulations. Contractor shall comply with all applicable federal and state statutes, laws, ordinances, regulations, and licensing procedures, including the Americans with Disabilities Act, etc., and abide by all applicable Fair policies and procedures, written or otherwise. If Contractor fails to obey laws, Fair may terminate this Agreement after giving thirty (30) days written notice to Contractor.

6. **Disclaimer.** Neither Fair nor Tulsa County assume liability for personal injury or for the loss or damage to any property of Contractor or patron due to fire, theft, tornado, weather conditions, the negligent or intentional acts of Contractor or of any third party, or other incident.
7. **Disputes.**
 - a. The parties will use best efforts to resolve any dispute arises between Contractor and Fair promptly by personal discussion.
 - b. In all cases, Contractor shall follow the reasonable instructions of Fair without delay.
8. **Policies.** Fair may establish and enforce whatever policies appears necessary for the regulation of the Carnival Operations.
9. **Sponsorship Grants by Fair.**
 - a. Fair may already have or may in the future enter into agreements with suppliers of certain products that grants to that supplier the exclusive right to have their product sold and advertised on the Fairgrounds. All advertising and promotional activities connected with Fair shall be reviewed and consented to by Fair. In no case may Contractor engage in conduct that conflicts with Fair's existing or future sponsorship contracts.
 - b. Fair shall notify Contractor at least thirty (30) days before the Annual Event of any agreement that may restrict the products offered by Contractor.
 - c. Contractor shall be required to work with Fair's preselected media and corporate sponsors in promoting the Annual Event including but not limited to the following:
 - i. Allow, in conjunction with Contractor's name and logo, name and title sponsorship of the midway carnival to selected media and corporate sponsors.
 - ii. Allow signage and promotional materials as "Presented By" for selected corporate and media partners in reference to the Carnival Operations including entrance signage, coupon discount books, and promotional references to the Carnival Operations.
 - iii. Allow selected media to use Contractor's name and logo in the promotion of the Carnival Operations and work with the selected media in coordinating marketing efforts.
 - iv. Coordinate with media and corporate sponsors in developing promotional programs for the Carnival Operations.
10. **Carnival Sponsors.** Any sponsorship funds or services that are secured by Contractor for use in conjunction with the Carnival Operations of Contractor shall not be associated with space or exposure opportunities in other locations under the control of Fair. Fair retains rights to all other locations in and around the Carnival Premises and on the Fairgrounds. Before placing any advertising on Carnival Premises, Contractor shall submit all advertising to Fair for its consent, which consent shall not be unreasonably withheld.
11. **No Waiver.** Failure of Fair to insist upon the strict performance of any provisions or to exercise any option or any rules and regulations shall not be construed as a waiver for the future of any such provision, rule, or option. The receipt by Fair of payments or fees with knowledge of the breach of any provision of this Agreement shall not be deemed to have been waived unless such waiver be in writing and signed by the Fair. No payment by a Concessionaire or receipt by Fair of a lesser amount than the payments or fees due shall be deemed to be other than on account of the earliest payments or fees then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction and Fair may accept such check or payment without prejudice to Fair's right to recover the balance of such payment or fee

and any other remedy available to Fair at law or equity, and no waiver by Fair in respect to one (1) Concessionaire shall constitute a waiver in favor to any other Concessionaire on the Fairgrounds.

12. Contractor Responsibility. Contractor is solely responsible for fulfillment of the contract with Fair. Fair shall make any required contract payments only to Contractor.
13. Subcontracting. Contractor shall not subcontract any portion of the services to be performed under the Contract without the prior written consent of Fair. Contractor shall be wholly responsible for the entire performance of the Agreement whether or not subcontractors are used.
14. Hold Harmless and Indemnification. Contractor shall indemnify, defend and hold Fair harmless of, from and against any and all costs, losses, claims, damages, judgments, demands, liabilities, expenses, and other obligations (including the actual reasonable fees of lawyers, expenses, and other obligations and costs), collectively, a "claim," incurred or suffered by Fair, arising from, or with respect to, or otherwise, the Carnival Operations of Contractor. The term "indemnify" as used in this section of this Agreement includes the payment of the actual reasonable fees of lawyers, expenses, and other obligations and costs incurred by Fair associated with the negotiations, mediation, arbitration, or civil action defense of a claim.
15. Status of Contractor. Contractor, its agents and employees, are independent Contractors performing services for Fair and are not employees of the Fair. Contractor, its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Fair as a result of this Agreement.
16. Assignment, Subletting, and Mortgaging. Contractor shall not have the right to assign or sublease this Agreement or any portion thereof or interest therein nor mortgage or otherwise encumber the Carnival Premises or Fairgrounds or any portion thereof without the prior written consent of the Fair; PROVIDED, that no act of subletting or assignment shall in any manner release or diminish in any way the duties and obligations of the Contractor under this Agreement, and the Contractor shall always remain liable to the Fair as an obligor for the payment of all sums hereunder and the faithful performance of all other provisions of this Agreement.
17. Conflict of Interest. Contractor warrants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict with the performance or services required as provided in this Agreement.
18. Amendment. This Agreement shall not be altered, changed, or amended except by instrument in writing executed by Fair and Contractor.
19. Scope of Agreement. This Agreement incorporates all the agreements, covenants, and understandings between Fair and Contractor concerning the subject matter of this Agreement, and all such covenants, agreements, and understandings have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of Fair and Contractor or their agents shall be valid or enforceable unless embodied in this Agreement.
20. Notice.
 - a. During the Annual Event.

All notices, demands, consents, approvals, and other communications that may or are required to be given by either Fair or Contractor to the other under this Agreement shall be deemed to have been fully given when made in writing and personally delivered if during the Annual Event as follows:

Tulsa County Public Facilities Authority
c/o Chief Executive Officer
4145 East 21st Street
Tulsa, OK 74114

North American Midway Entertainment
Attn.: President or CFO
109 South Main Street
P.O. Box 429
Farmland, IN 47340

b. Not During the Annual Event.

If at any time other than during the Annual Event, when made in writing and personally delivered or if delivered by United States mail, postage prepaid, certified or registered mail, and addressed to Fair or Contractor at their respective addresses as follows:

Tulsa County Public Facilities Authority
c/o Chief Executive Officer
P.O. Box 4735
Tulsa, OK 74159

North American Midway Entertainment
Attn.: President or CFO
109 South Main Street
P.O. Box 429
Farmland, IN 47340

Any party may designate in writing another address or another person to receive notice

21. Applicable Law. This Agreement shall be governed by the laws of the State of Oklahoma. Venue shall lie in Tulsa County, State of Oklahoma.
22. Equal Opportunity Compliance. Contractor shall abide by all federal and state laws, rules and regulations, and executive orders from the Governor of the State of Oklahoma, pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders of the Governor of the State of Oklahoma, Contractor shall assure that no person in the United States shall, on the grounds of race, color, national origin, sex, age, or denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Contractor is found to be not in compliance with these requirements during the life of the Contract, Contractor agrees to take appropriate steps to correct these deficiencies.
23. Events of Default. Each of the following is an "Event of Default," as used in this Agreement, whether voluntary or involuntary or arising by operation of law or as a result of an action or otherwise:
 - a. Failure to Pay. The failure by Contractor to pay any amount when due to Fair from Contractor as provided in this Agreement.
 - b. Failure to Observe. The failure to timely observe, perform, or discharge the obligations of Contractor to Fair as provided in this Agreement
 - c. Damage to Property. The abandonment, material damage, to a material part of the Carnival Operations, so that in the judgment of Fair, the Carnival Operations cannot be or would not be able to be operated by Contractor as provided in this Agreement.
 - d. False Representation. If any representation or warranty made by Contractor is or becomes false or misleading in any material respect.
 - e. Bankruptcy, etc. If Contractor or any partner, member, or stockholder of Contractor (i) is liquidated, (ii) is adjudicated as bankrupt or insolvent, (iii) voluntarily files, or consents by answer to the filing

against Contractor, against any partner, member or stockholder of Contractor, a petition for relief or reorganization, arrangement, adjustment, winding-up, composition or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iv) makes any assignment for the benefit of creditors, (v) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers, for Contractor, for any partner, member or stockholder of Contractor, or for the Carnival Operations, or any material part of any other property owned by Contractor, by any partner, member or stockholder of Contractor (vi) admits in writing any inability to pay debts upon maturity, (vii) has a judgment entered by a court of governmental authority of competent jurisdiction that appoints a custodian, receiver, trustee or other officer with similar powers with respect to Contractor, or any partner, member or stockholder of Contractor, or the Carnival Operations, or any material part of any other property owned by Contractor, or by any partner, member or stockholder of Contractor, or that constitutes an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction or that orders the dissolution, winding-up or liquidation of Contractor, or of any partner, member or stockholder of Contractor, or if any such petition or complaint is filed against Contractor, or against any partner, member or stockholder of Contractor, and the petition is dismissed within sixty (60) days, or (viii) takes any partnership, limited liability company or corporate action for the purpose of any of the foregoing.

24. **Fair's Remedies.** Upon the occurrence of an Event of Default, Fair may take any or all of the following actions, after giving at least thirty (30) days' notice and opportunity to cure to Contractor:
- a. Fair may collect by suit or otherwise, any amounts due from Contractor as provided in this Agreement, or enforce, by suit or otherwise, any other agreement or obligation that is required to be performed by Contractor. Fair may also elect to cure any default of Contractor and, in such event, Contractor shall immediately reimburse Fair for the costs so incurred.
 - b. Fair may terminate this Agreement by written notice to Contractor. If termination occurs, Contractor shall immediately surrender possession of the Carnival Premises. The termination shall not relieve Contractor of any obligation as provided in this Agreement that has accrued before the date of the termination and Fair may recover from Contractor all damages Fair has incurred by reason of a breach by Contractor, including the cost of recovering the Carnival Premises, and reasonable fees of lawyers.
 - c. The remedies given to Fair in this paragraph 27 shall be cumulative and shall be in addition and supplemental to all other rights or remedies which Fair may have at equity or under the laws then in force.
25. **Recovery of Refurbishing Costs.** Fair may recover from Contractor, and Contractor shall pay to Fair upon demand, such expenses as Fair may incur in recovering possession of the Carnival Premises, or any portion of the Carnival Premises, placing the Carnival Premises in good order and condition and altering or repairing the Carnival Premises for Carnival Operations by Fair or others, as well as all other expenses, commissions, and charges incurred by Fair in exercising any remedy provided in this Agreement or as a result of any Event of Default by Contractor as provided in this Agreement.
26. **Strict Performance.** The failure of Fair to insist upon the strict performance by Contractor of any of the terms, conditions, and agreements as provided in this Agreement shall not be deemed a waiver of any rights or remedies that Fair may have, and shall not be deemed a waiver of any later breach or default by Contractor in performing the terms, conditions, and agreements as provided in this Agreement.
27. **Access to Premises.** Contractor shall permit Fair or the authorized representatives of Fair, or both, to enter the Carnival Premises at all reasonable times for inspection during usual business hours for the purpose of inspecting the Carnival Premises. Such inspection shall be made in such a way as not to disrupt Contractor's business.
28. **Surrender of Premises.** At the end of each Annual Event or earlier termination of this Agreement, Contractor shall surrender the Carnival Premises in the same condition as existed, ordinary and reasonable wear and tear excepted. Before surrendering the Carnival Premises at the natural expiration of this Agreement, Contractor

shall remove all of the personal property and trade fixtures of Contractor and such alterations or additions to the Carnival Premises made by Contractor as may be specified for removal by Fair, and shall repair any damage to buildings and to the alterations, additions, or other permanent improvements remaining, caused by such property or the removal of the property and shall leave the Carnival Premises in a clean, orderly, and swept condition. If Contractor fails to remove the personal property and fixtures of Contractor on or before the ending date of this Agreement, Fair may either (i) deem such to be abandoned in which case the property shall become the property of Fair, or (ii) remove and dispose of the property at the expense of Contractor. All alterations and additions not specified for removal by Fair shall belong exclusively to Fair upon the end or termination of this Agreement (without Contractor having any rights in the alterations or additions).

29. **Fees of Lawyers.** If either party is required to initiate or defend litigation or other legal action in any way with respect to this Agreement, in addition to any other relief that may be granted, whether legal or equitable, the prevailing party shall be entitled to reasonable fees of lawyers. Attorneys' fees shall include fees of lawyers on any appeal, and, in addition, fees of lawyers shall include all other reasonable costs for investigating the action, taking depositions, conducting other discovery, travel, and all other necessary costs incurred in the litigation.
30. **Time of the Essence.** Time is and shall be of the essence of each term, provision, covenant and condition of this Agreement.
31. **No Partnership, Joint Venture, or Other Association.** Fair does not by this Agreement, in any way or for any purpose, become a partner or joint venturer of Contractor in the conduct of the business of Contractor or otherwise. Contractor is an independent contractor hereunder.
32. **Force Majeure.** Either Fair or Contractor shall be excused for the period of any delay in the performance of any of the obligations of Fair or Contractor as provided in this Agreement, when prevented from so doing by cause or causes beyond the control of Fair or Contractor, including strikes and labor disputes; civil commotion; war; governmental regulations or controls; fire or other casualty; inability to obtain any material (or reasonable substitute therefor); labor or service; so called acts of God; or failure or slowness of governmental entities to take action, but nothing provided in this Agreement shall excuse Contractor from paying amounts to Fair when due as provided in this Agreement.
33. **Contractor's Rights Partially Exclusive.** It is specifically understood and agreed that Contractor's rights hereunder are only exclusive as to rides and games and the Fair specifically reserves the right to operate or permit the operation by others of rides, shows, or concessions, only if owned by Fair on the date of this Agreement, or disclosed in Exhibit B hereto, at any Annual Event.
34. **Development and Implementation of Universal Coupon or Cashless Midway System.** The Fair reserves the right to develop and implement a universal coupon or cashless midway system for all Amusement Rides, Games of Skill, Attractions, and Concessions at any Annual Event covered by this Agreement. Contractor agrees to fully cooperate with the Fair in the development and implementation of such universal coupon or cashless midway system. It is further understood and agreed that in connection with the implementation of any such universal coupon or cashless midway system the front footage rates set forth herein for Games of Skill and Concessions must be changed to percentage charges such as those set forth herein for Amusement Rides and Attractions; PROVIDED; that any such percentage charges to be applied to Games of Skill and Concessions shall be agreed upon in advance by the Fair and Contractor.
35. **Moving of or Cessation of Annual Event.** In the event the Fair, in its sole discretion, determines at any time during the term hereof not to conduct any Annual Event then this Agreement shall, at the election of the Fair (a) terminate upon written notice of such election to Contractor, or (b) remain in full force and effect for any subsequent years during the term hereof during which an Annual Event is held at the Fairgrounds.
36. **Liens.** Contractor agrees that it shall not suffer or permit any encumbrances or liens of any nature to be filed against the Fairgrounds or any improvements thereon or against the interest of the Contractor in this Agreement. If any such encumbrances or liens shall at any time be filed, Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be released and discharged; PROVIDED, HOWEVER, that Contractor

may contest any such lien or claim of lien in any manner provided by law so long as no execution, levy, or attachment shall issue against the Fairgrounds or any improvements thereon.

37. Master Lease. This Agreement is subject to all of the terms, covenants and agreements contained in the Master Lease and any action by the Contractor which would constitute a default under the Master Lease if Contractor were the lessee pursuant to the terms of the Master Lease shall constitute an Event of Default under this Agreement.
38. No Interest in Real Property. Notwithstanding anything contained herein to the contrary, this Agreement does not convey and is not intended to convey to Contractor any interest or estate in real property, including, without limitation, the Fairgrounds or any portion thereof including the Carnival Premises.
39. Accord and Satisfaction. No payment by Contractor or receipt by Fair of any amount less than is due as provided in this Agreement shall be deemed to be other than payment toward or on account of the earliest portion of the amount then due, nor shall any endorsement or statement on any check or payment (or any letter accompanying any check or payment) be deemed an "accord and satisfaction" (or payment in full), and Fair may accept the check or payment without prejudice to the right of Fair to recover the balance of the amount or pursue any other remedy provided in this Agreement.
40. Construction. The language used in this Agreement shall be construed according to the fair and usual meaning of the language, and shall not be strictly construed for or against either Fair or Contractor.
41. Expense. Except as specifically provided otherwise in this Agreement, any action, either required or optional, taken by either Fair or Contractor as provided in this Agreement, is taken at the expense of the actor unless otherwise specifically provided in this Agreement.
42. Waiver and Remedies. No waiver of any default as provided in this Agreement or delay or omission in exercising any right or power of Fair or Contractor shall be considered a waiver of any other default as provided in this Agreement. No exercise or failure to exercise any right or power of Fair or Contractor as provided in this Agreement shall be considered to exhaust that right or power. The exercise of or failure to exercise anyone of the rights and remedies of Fair or Contractor as provided in this Agreement shall not be deemed to be instead of, or a waiver of, any other right or remedy as provided in this Agreement.
43. Modification. This Agreement and any term as provided in this Agreement may be modified, amended, discharged, charged, or waived only in writing signed by the party against which the enforcement of the modification, amendment, discharge, charge, or waiver is sought.
44. Headings and Use of Terms. The section and paragraph headings to this Agreement are for convenience and reference only. The words as provided in the section and paragraph headings shall not be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the terms of this Agreement. Terms defined in this Agreement have the meaning, designation, and significance ascribed to the terms defined in this Agreement.
45. Sections, Articles, and Exhibits. All references in this Agreement to paragraphs, sections, articles, and exhibits shall, unless otherwise indicated, be references to paragraphs, sections and articles of, and exhibits to, this Agreement.
46. Counterparts. This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same document.
47. Incorporation of RFP and Proposal. Fair's Request For Proposals dated June 22, 2015, and Contractor's Proposal in response thereto ("Contractor's Proposal"), including exhibits, are hereby incorporated by reference. In the event of any conflict between such Request For Proposals and Contractor's Proposal, and this Agreement, this Agreement shall govern.

TULSA COUNTY PUBLIC FACILITIES AUTHORITY


Chairman

2/4/16
Date

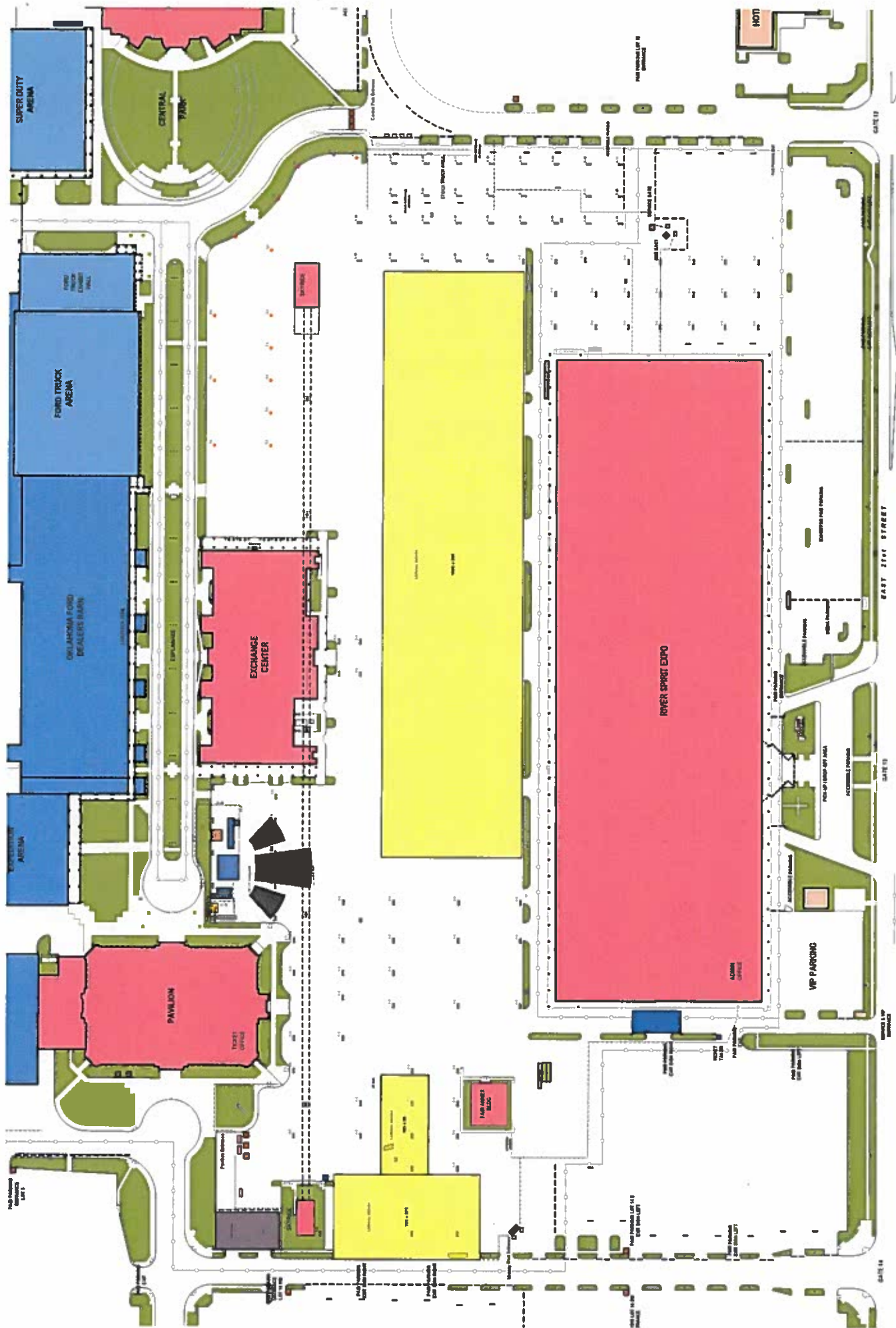
NORTH AMERICAN MIDWAY ENTERTAINMENT - SOUTHEAST, LLC


Authorized Official

2/4/16
Date

Exhibit A

Expo Square Map / Plat; defining the space allocation for the Carnival Midway.



GOLF CART PATH

EAST 3RD STREET

GATE 1I

GATE 1H

GATE 1G

GATE 1F

GATE 1E

GATE 1D

GATE 1C

GATE 1B

GATE 1A

LEGEND
 GOLF CART PATH
 GOLF CART STATION

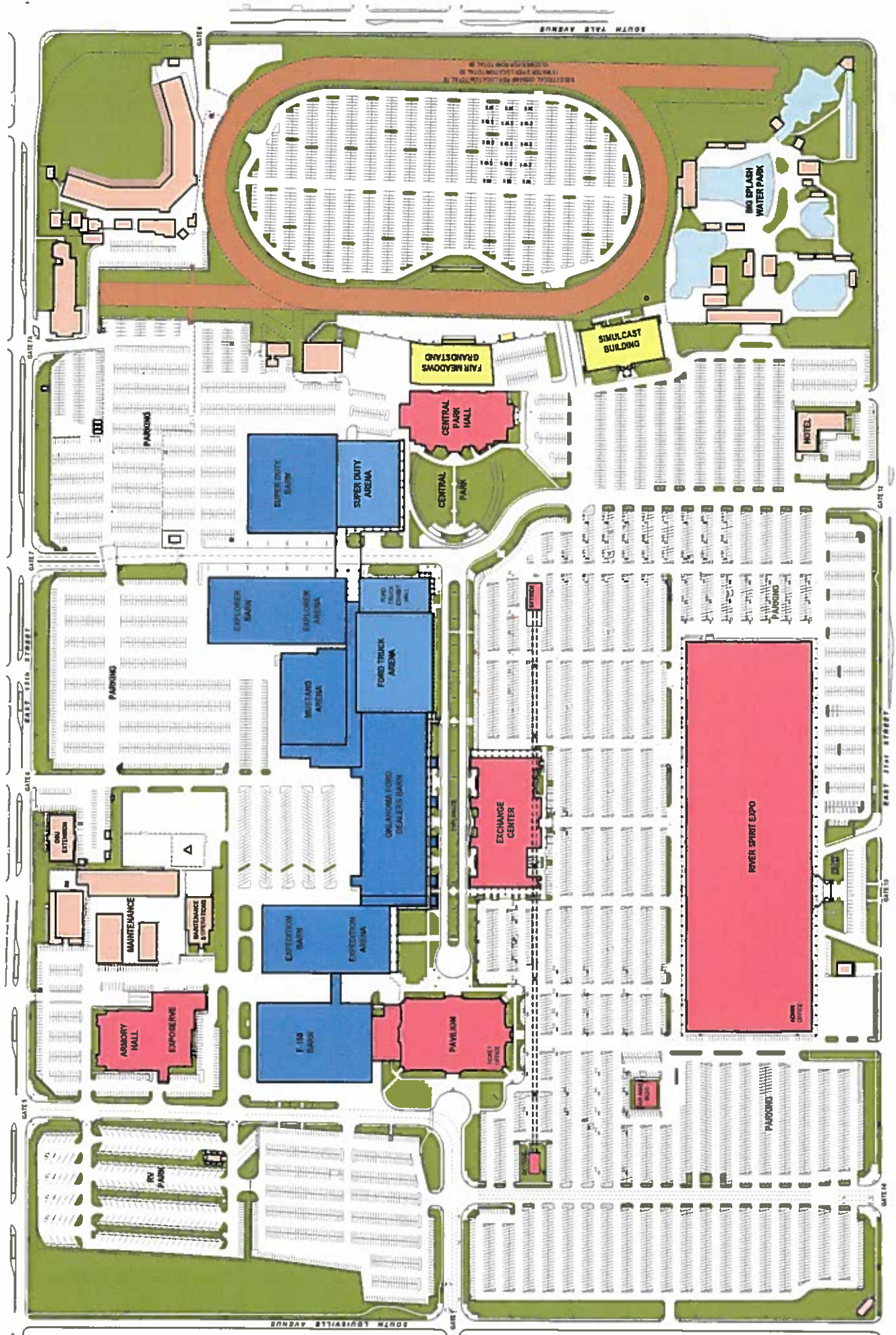


Exhibit B

Current Rides Operated by Fair or Contracted Independent Party

1. Sky Ride
2. SkyScraper
3. Sling Shot
4. Power Quad Jump
5. Krazy Maze
6. Arkansas Valley Paintball
7. Sports 4 U-Knockerballs
8. Inflatable Shark Slide
9. Vortex Tunnel
10. Bull Ride

Deadline Summary

Date	Time	Description	Agreement Location	Additional Notes
6/22/2015		Fair's Request For Proposal Published		
3/31/2016		Guaranteed Payment Due by Contractor	D2a	Guaranteed Sum of \$1 million (\$1,000,000.00) in cash or certified check
6/1/2016		Amusement Rides and Attractions Information Due by Contractor	B6a	
6/1/2016		Games of Skill Information Due by Contractor	B6b	
6/1/2016		Contractor Concessions Information Due by Contractor	B6c	
6/1/2016		Carnival Operations Preliminary Diagram Due by Contractor	B8a	Proposed location of all Carnival Operations
7/1/2016		Carnival Operations Final Diagram Due by Contractor	B8bi	Final diagram of all Carnival Operations locations and description/price lists
7/1/2016		Parking Passes Due by Fair	B4c	
7/1/2016		Amusement Ride and Attraction Ticket Prices Due	B28a	Value established and mutually agreed upon by both parties
8/15/2016		Original Insurance Certificate Due by Contractor	B14a	Delivery Deadline
8/30/2016		Notification of Any Product Restrictions due by Fair	D9b	
9/20/2016		Changes to Games of Skill Due by Contractor	B6b	Any changes to the original list of Games of Skill must be submitted
9/20/2016		Changes to Contractor Concessions Due by Contractor	B6c	Any changes to the original list of Contractor Concessions must be submitted
Awaiting NAME		Date & Time Modifications Due by Fair	B1b	
9/28/2016		Written Agreement and Acknowledgement from Contractor Concessions Due by Contractor	B6c	All non—alcoholic beverages and cans, containers, cups, syrup and CO2 must be purchased through Coke
9/29/2016 - 10/9/2016		2016 Annual Event	B1a	
9/29/2016	12:00 p.m. (noon)	Carnival Operations Set & Ready for Business by Contractor	B1c	
9/29/2016	5:00 p.m.	Carnival Operations Fully Operational by Contractor	B11c	All Amusement Rides, Attractions, Games of Skill and Concession should be fully operational
9/29/2016	5:00 p.m.	2016 Annual Event Opens	B1a	
10/9/2016	11:00 p.m.	2016 Annual Event Closes	B1a	
10/9/2016	11:00 p.m.	Tear-Down of Carnival Operations Begins	B1d	Tear-down of Carnival Operations may begin once all public is clear of Carnival Premises.

10/10/2016	2:00 p.m.	Payment for Electricity Due by Contractor	B27c	Payment made to fair by contractor
10/10/2016	5:00 p.m.	Final Gross Payment Due by Contractor	C1b	If this timeline changes it must be mutually agreed upon
10/12/2016	2:00 p.m.	Reimbursement of the Restoring Cost of the Carnival Premises Due by Contractor	B23a	Only if Carnival Premises is not returned to required condition
10/12/2016	11:00 p.m.	Tear-Down of Carnival Operations Complete	B1d	
10/30/2018		Agreement Termination	D1	Without notice, unless earlier terminated pursuant to D2