

**CONTRACT**  
**MITCHELL DUFUR, AMPIRE AMUSEMENTS**

THIS CONTRACT is made and entered into by and between PACIFIC COUNTY hereinafter referred to as the "COUNTY" and MITCHELL DUFUR, an individual, and AMPIRE AMUSEMENTS, hereinafter referred to collectively as the "CONTRACTOR".

WHEREAS the COUNTY desires to hire the CONTRACTOR to operate the amusement BUNGEE JUMP at the 2022 Pacific County Fair and the CONTRACTOR has the necessary equipment, skills, experience and expertise to provide said services;

NOW THEREFORE, in consideration of the terms, conditions and obligations contained herein, the parties hereto agree as follows:

1. **LOCATION.** The CONTRACTOR shall provide the services described herein at a location to be determined by the COUNTY at the Pacific County Fairgrounds Midway. The Midway is defined as the open field that has traditionally served as the Fair's Midway & Carnival.

2. **SERVICES PROVIDED BY CONTRACTOR.** During the term of this Contract, the CONTRACTOR shall provide the following services:

A. Provide and operate the amusement bungee jump at the 2022 Pacific County Fair. The one bungee jump will use approximately 35' x 35' space at the 2022 Pacific County Fair.

B. Keep the Midway clear of debris and garbage during the Contract term, and leave the Midway in the state of cleanliness in which it was found.

C. CONTRACTOR shall be solely responsible for providing setting up the amusement bungee area and for removing the same at the conclusion of this Contract.

3. **TERM.** This Contract shall commence on August 24, 2022 and conclude at the end of the day on August 27, 2022. CONTRACTOR shall be provided reasonable access to the Midway before and after the Contract term to set up and remove equipment and clean up the grounds.

4. **PAYMENT.** CONTRACTOR agrees to pay COUNTY \$500 for the use of space at the 2022 fair to provide the bungee ride for entertainment.

5. **COMPLIANCE WITH LAWS.** CONTRACTOR shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations.

6. **EMPLOYEES OF CONTRACTOR.** CONTRACTOR shall not employ anyone in fulfillment of this Contract who is required to register as a sex offender under Chapter 9A.44.130 RCW or who has been prohibited from contact with a vulnerable adult under Chapter 74.34.130 RCW. Upon request, CONTRACTOR shall provide COUNTY with a list of the names and addresses of all employees, volunteers, and subcontractors of CONTRACTOR.

7. **RELATIONSHIP OF PARTIES.** It is understood by the parties that CONTRACTOR is an independent contractor with respect to COUNTY, and is not an employee of COUNTY. COUNTY shall not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of CONTRACTOR or its employees.

8. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES.** No federal or state income tax, or payroll tax of any kind shall be withheld or paid by COUNTY on behalf of CONTRACTOR or the employees of CONTRACTOR. No employees of CONTRACTOR shall be treated as employees with respect to services performed hereunder for federal or state tax purposes. CONTRACTOR shall be solely responsible for paying any and all taxes, FICA, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit-sharing, and other benefits for CONTRACTOR and its employees, servants, and agents.

9. **WORKERS' COMPENSATION.** No workers' compensation insurance shall be obtained or paid for by COUNTY concerning CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall comply with workers' compensation laws concerning CONTRACTOR and the employees of CONTRACTOR.

10. **ASSIGNMENT/SUBCONTRACTORS.** CONTRACTOR's obligations under this Contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the COUNTY. CONTRACTOR shall not subcontract any part of the work to be performed under this Contract or assign this Contract without the specific written consent of the COUNTY.

11. **TERMINATION.** COUNTY may freely terminate this Contract at will at COUNTY's sole discretion upon verbal or written notice to CONTRACTOR.

12. **PUBLIC RECORDS ACT.**

A. This Contract and all public records associated with this Contract shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information

will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

B. The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

C. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Contract shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Contract.

13. **INSURANCE.** Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

A. General Liability Insurance. CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$3,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

B. Professional Liability (Errors & Omissions) Insurance. CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.

C. Workers' Compensation Insurance. CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

D. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

E. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

F. Additional Insured. The CONTRACTOR shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

14. **INDEMNIFICATION.** To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which (1) are caused in whole or in part by any action or omission, negligent otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers, or (2) are directly or indirectly arising out of, resulting from, or in connection with performance of the Contract; or (3) are based upon the CONTRACTOR's or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstances where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other worker's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing identification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

15. **PARTICIPATION COUNTY – NO WAIVER.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under Contract.

16. **SURVIVAL.** CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this Contract.

17. **ASSUMPTION OF RISK.** CONTRACTOR assumes all risk for the placement and storage of personal property on the Midway premises.

18. **DISCLAIMER.** Except as otherwise provided in this Contract, COUNTY makes no representation or warranty of any kind, express or implied, with respect to the safety, fitness, or suitability of the Midway premises for CONTRACTOR's use.

19. **ATTORNEY'S FEES.** If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

20. **AMENDMENT.** The parties may amend this Contract at any time provided that such amendments make specific reference to this Contract, are executed in writing, are approved by the authorized representative of each party, and are approved by the County's governing body. Such amendments will neither invalidate this Contract nor relieve or release either party from its obligations under this Contract.

21. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Washington. The venue of any litigation between the parties relating to this Contract shall be the Superior Court of Pacific County, State of Washington.

22. **SEVERABILITY.**

A. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

B. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

C. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

23. **NON-WAIVER.** The failure of either party to exercise any of its rights under this Contract for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

24. **FORCE MAJEURE.** If any party is unable to perform any of its obligations under this Contract as a direct result of any law, ordinance, regulation, ruling, order, or other governmental action, or restriction arising out of acts of nature, local or national emergencies, fire, epidemics, flood, war, sabotage, accidents, labor disputes, or any other similar circumstances beyond the control of the party, the time of performance and payment may be waived, modified or extended by the number of days and degree of impact directly attributed to the force majeure event. Each party shall use best effort to minimize the effects of such failures, restrictions, or delays.

25. **COUNTERPARTS.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. **CONTRACT PROVISIONS.** Payments due to the CONTRACTOR under this Contract are expressly conditioned upon the CONTRACTOR's strict compliance with all insurance requirements under this Contract. Payment to CONTRACTOR shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

27. **ENTIRE CONTRACT.** This Contract contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date last executed below.

## CONTRACTOR

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

**Mitchell Dufur**  
**Ampire Amusements**  
 1649 Santa Ana Avenue  
 Clovis, CA 93611  
 (559) 387-8462

Date \_\_\_\_\_

**Lisa Olsen, Chairperson**

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

ATTEST

Amanda Bennett  
Clerk of the Board

Date \_\_\_\_\_

