

AGREEMENT FOR OPERATION OF CARNIVAL AND RELATED FACILITIES AT THE 2011 PACIFIC COUNTY FAIR

1. PREAMBLE

1.1 Parties. THIS AGREEMENT is made and entered into this date by and between PACIFIC COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY", operator of the annual Pacific County Fair, hereinafter referred to as "FAIR", and Haworth Family Shows, Inc. Carnival Company, an Oregon Corporation authorized to transact business in the State of Washington, hereinafter referred to as "LICENSEE".

1.2 Purpose. The purpose of this agreement is to provide for operation of a carnival and related facilities for family entertainment during the 2011 Pacific County Fair. The carnival and related facilities shall include:

- (a) Amusement rides,
- (b) Novelty concessions,
- (c) Game Concessions, and
- (d) Food concessions

1.3 Grant of License. The COUNTY grants LICENSEE permission to occupy and use certain real property at the times and for the purposes set out herein subject to all terms and conditions hereof.

1.4 Premises. The real property subject to this agreement consists of designated portions of the Pacific County Fairgrounds, Menlo, Washington. The Fair Manager will designate specific areas within the fairgrounds, hereinafter referred to as "premises".

1.5 Dates of use and hours of operation.

- (a) This agreement provides for operation of carnival and related facilities during the 2011 County Fair. LICENSEE is licensed to occupy and use the premises for the purposes herein permitted on the following dates: 2011 Fair (including move-in/move-out time) – August 23-28, 2011
- (b) The Carnival will open at 12:00pm each day.

1.6 Possession. Possession of the premises shall at all times remain with the COUNTY and the rights of use and occupancy are subject to limitation, suspension, or revocation by the COUNTY when the COUNTY determines it has a need for the premises inconsistent with the rights herein granted, provided, the COUNTY shall give such notice as is reasonable under the circumstances.

II. AMUSEMENT RIDES

2.1 Basic Obligations. LICENSEE is obligated to bring to the Pacific County Fairgrounds and cause to be operated during the hours of operation, a carnival consisting of amusement rides, games and concessions.

2.2 Tickets. LICENSEE will provide advance presale ticket coupons for \$20.00 (\$40 value). Presale Ticket Coupons will be turned in to the carnival ticket box in exchange for "tickets" and are valid for any day of the fair.

2.3 Special Promotions. LICENSEE will provide for the presentation of special days featuring reduced prices for amusement rides. Special days during each fair will be determined between the FAIR and LICENSEE.

2.4 Payment.

(a) LICENSEE agrees to pay the FAIR twenty percent (20%) from the sale of ride admission tickets AFTER deducting any government and/or state tax required by Federal and State Laws if any, plus 5.5% liability insurance and 5.5% fuel surcharge.

III. GAME AND FOOD CONCESSIONS

3.1 Payment. The sum of twenty dollars (\$20) shall be paid by the LICENSEE to the FAIR for each game and food concession operated for the duration of the fair.

3.2 Restrictions. LICENSEE shall not: operate any games which are in violation of state laws or regulations; offer cash prizes or re-purchase prizes in any game; offer as prizes: live ducks, chicks, or other live animals; knives, firearms, or any look alike items which could be used as a weapon; offer as prizes, or display, drug paraphernalia, posters or other items deemed to be inappropriate by the COUNTY and FAIR.

IV. PAYMENT PROCEDURE

4.1 Payments Due. Amounts owed to the FAIR shall be made promptly at the conclusion of the 2011 fair.

V. CONDITIONS OF USE

5.1 Location of Carnival. The amusement rides and concessions shall be operated exclusively within the areas designated by the FAIR.

5.2 Operation Terms. The LICENSEE shall:

(a) Conform to and comply with all federal, state, county and local sanitation and health rules, regulations and laws governing such use.

(b) Report and pay all federal, state, county and local taxes that may be due or payable by reason of any operation hereunder.

(c) Reduce the volume of sound amplifying devices when determined necessary by the FAIR.

(d) All prices and number of tickets must be conspicuously posted at all appropriate locations. Appropriate signage must be displayed as a form of information. Signage must be neat and displayed in a professional manner that enhances the appearance of the carnival.

(e) Post in a conspicuous place a plainly printed placard showing menus and the prices of all menu items.

(f) Maintain designated area free of all garbage and debris at all times. Garbage and debris to be bagged and deposited in designated collection area.

(g) Promptly close operation of concessions which in the opinion of the FAIR is offensive to good taste or in any particular way objectionable.

(h) Abide by all general conditions and rules and regulations, written or orally made by the COUNTY and FAIR.

(i) Use only fire resistant materials for decorating.

(j) Put grease in designated containers.

(k) Provide own extension cords and hoses for water and sewer hookup to County facilities where necessary.

(l) Be responsible for and the removal of any hazardous products generated during the fair and comply with all laws, rules and regulations concerning hazardous waste.

(m) Require all employees to wear distinctive uniforms. Uniforms shall be maintained and laundered as necessary.

(n) Have all employees provide courteous, efficient, sanitary, and safe service to patrons. Abusive language will not be tolerated. Persons handling and vending products under this agreement shall meet all applicable COUNTY and state health regulations.

- (o) No bicycles, skateboards, or roller blades will be allowed on the main fairgrounds.
- (p) LICENSEE shall provide their own power source i.e. (generators) and wiring for rides, games, and equipment operation.
- (q) The quality of the carnival rides, games, attractions and concessions shall be properly maintained and presentable.
- (r) No dogs, except physical assistance dogs (i.e. Seeing Eye, etc.) will be permitted at any time on the fairgrounds.

5.3 Alterations. The LICENSEE shall:

- (a) Permit no electrical wiring to be done on any portion of the fairgrounds electrical system without permission from the COUNTY and/or FAIR and then only under the supervision of the COUNTY and/or FAIR. LICENSEE must comply with all laws, rules, and regulations including local ordinances and electrical codes.
- (b) Make no alterations to COUNTY property.

5.4 County Approval.

- (a) If the COUNTY and/ or FAIR disapprove of any amusement ride, game or food concession, LICENSEE shall discontinue the ride, close the game or food concession until the problem is remedied.
- (b) On or before June 1, 2011, LICENSEE shall submit to the COUNTY for its approval a written listing of all concessions that LICENSEE intends to operate and items to be sold. The COUNTY shall notify the LICENSEE of its approval or disapproval of the listing or portion thereof. If the COUNTY disapproves any concession or item to be sold, LICENSEE shall on or before June 25, 2011 submit an alternative to meet the approval of the COUNTY.
- (c) Approval of all amusement rides and concessions shall be at the sole discretion of the COUNTY. Only LICENSEE and wholly owned equipment will be used to service this agreement. Any request for sub-contracting must be submitted by June 15th of each year with type of equipment and who owns equipment explained. Failure of LICENSEE to submit the listings as required by this paragraph shall constitute a breach of this agreement.
- (d) The LICENSEE, with written consent of the COUNTY, may add additional or substitute amusement rides, of their own, up to seven (7) days prior to the fair when, in the opinion of the COUNTY, such addition or substitution would materially enhance the overall quality of the fair.

5.5 Approvals Conditional. Any approval by COUNTY under this agreement is conditioned upon the amusement rides and concessions meeting the requirements of all federal, state and local laws and the COUNTY reserves the right at any time without liability or penalty, to disapprove any ride or concession upon its sole determination that there is or may be a violation of any law. The responsibility and cost of obtaining any and all permits as may be necessary to assure compliance with the law shall be borne entirely by the LICENSEE.

5.6 Compliance With Law Required. LICENSEE covenants that its carnival and all amusement rides, novelty and game concessions, and food concessions or those of any sub-licensee or subcontractor shall strictly comply in all particulars with every provision of this agreement, and with applicable COUNTY, state and federal laws, rules and regulations, in any matter concerning the operations contemplated by this agreement. LICENSEE further covenants that in operation of its carnival and in the operation of all amusement rides, sideshows, and concessions under this agreement there shall be no obscene, immoral or objectionable devices or practices, shows, or exhibits of any kind whatsoever. LICENSEE will immediately upon demand of the COUNTY close and remove from the fairgrounds any such device or practice, show or exhibit that is operated in violation of any COUNTY, state or federal law, rule or regulation, or which is, in the COUNTY's opinion, in any manner obscene, immoral or otherwise objectionable. LICENSEE agrees to save the COUNTY and its elected and appointed officials, officers, employees, agents and volunteers harmless from any liability or damage for closure or removal

from the fairgrounds. Such closure or removal will in no way reduce the amount of money due the COUNTY from LICENSEE under this agreement.

5.7 Exclusivity of Licensee's Rights. The COUNTY shall not permit any commercial carnival offering mechanized amusement rides to be operated on the fairgrounds during the fair, except that of LICENSEE, unless LICENSEE fails to comply with the terms and conditions of this agreement, thereby making it necessary for the COUNTY to obtain the services of another operator; PROVIDED THAT the COUNTY or its other contractors may operate any activity classed as transportation, motorized or otherwise, to convey visitors to or from the fair, and PROVIDED FURTHER that such exclusivity of right shall not apply to the operation of novelty, game, and food concessions, and the COUNTY shall be free to authorize such additional concessions as it may deem necessary so long as said concessions are not located within the designated carnival area, and, PROVIDED FURTHER that the COUNTY may operate or cause to be operated a specialty ride which the LICENSEE cannot or will not provide, such operation to be no less than fifteen (15) yards away from the designated carnival area.

5.8 Abide by Rules and Regulations. LICENSEE shall cause all its agents, employees, and any sub-licensee or subcontractor to abide by all rules and regulations prescribed by the COUNTY or the FAIR governing the operation of and admission to and exit from the fairgrounds during the fair or providing for parking or traffic control and by such other reasonable rules and regulations of the FAIR as may be communicated to LICENSEE prior to or during the fair.

5.9 Vehicles. Personal vehicles and business vehicles of the LICENSEE, LICENSEE's agents, employees and any sub-licensee or subcontractor, not needed for actual carnival operation shall at no cost to LICENSEE be parked only in a parking area to be designated by the FAIR.

5.10 Clean Premises. LICENSEE agrees to clean at LICENSEE's expense, the designated carnival area and dispose of all refuse within twenty-four (24) hours of the close of the fair and to repair all damage to such area and restore it to the same condition as originally found. Additionally, during the period which the fair is operating, LICENSEE shall observe good housekeeping practices and keep the area provided for operation of its facilities and those of its subcontractors and sub-Licensees neat and clean at all times so that they will be in a presentable condition as will be deemed reasonably satisfactory to the FAIR. All refuse shall be placed in containers to be provided by the FAIR, with the FAIR to assume the expense of transportation for disposal of such waste at an approved landfill site. Any failure to comply gives the FAIR authority to restore and clean the premises at LICENSEE's expense.

VI. GENERAL CONDITIONS

6.1 Payments. All payments due and owing under this contract shall be paid to the FAIR by the LICENSEE, and all documents required to substantiate such payments shall be provided, no later than five (5) days after the closing.

6.2 County to Furnish Water. The FAIR agrees to furnish to LICENSEE for use on the fairgrounds reasonable quantities of potable water for LICENSEE's use only.

6.3 Hold Harmless Agreement. LICENSEE shall protect, save harmless, indemnify, and defend at its own expense, Pacific County, its elected and appointed officials, officers, employees, agents, and volunteers from any loss or claim for damages of any nature whatsoever, arising out of the performance of this agreement, including claims by LICENSEE's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of Pacific County, its elected and appointed officials, officers, employees, agents, or volunteers. Neither Pacific County, nor its elected and appointed officials, officers, employees, agents, or volunteers shall be liable for any damage or injury to the LICENSEE, its sub-Licensees or sub-contractors, or its or their employees, or its or their properties occurring through, or caused by a defect to the premises used or property licensed pursuant to this

agreement. LICENSEE shall assume the entire risk by loss of or damage to its property or property of its sub-Licensees or sub-contractors used in connection with this agreement. Property shall include but not be limited to the amusement rides, side shows, novelty and game concessions, and food concession booths together with all of their fixtures, supplies, and inventory of merchandise for sale, owned or leased by or consigned to the LICENSEE or his sub-Licensees or sub-contractors.

6.4 Insurance.

(a) LICENSEE shall obtain, and maintain continuously for the term of this agreement, occurrence form Commercial General Liability Insurance with endorsements and/or other insurance to indemnify for the activities and services of this contract, with a carrier subject to the approval of the COUNTY. Minimum limit of coverage shall be TWO MILLION DOLLARS (\$2,000,000.00) combined single limit, each occurrence and FIVE MILLION DOLLARS (\$5,000,000.00) aggregate exclusive to this contract with Pacific County.

(b) Such insurance shall be endorsed to include Pacific County, its officers, elected officials, employees, agents, and volunteers as an additional insured, and shall not be reduced or canceled without forty-five (45) days written prior notice to the COUNTY.

(c) Such insurance shall be endorsed to include a "cross liability", "severability or interests", or "separation of insured's" indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

(d) LICENSEE shall provide to the COUNTY a certified copy of the insurance policy with all endorsements as evidence of coverage. Approval of insurance documentation is a condition precedent to full execution of this agreement.

6.5 Governing Law and Stipulation of Venue. The laws of the State of Washington shall govern this agreement and the parties stipulate that any lawsuit regarding this agreement must be brought in Pacific County, Washington.

6.6 Attorney's Fees. The losing party agrees to pay reasonable attorney fees and costs to the prevailing party in the event it is necessary to commence any legal action, suit or proceeding against the other party by reason of any breach of this agreement.

6.7 Indemnification for Damage to County Property. The LICENSEE agrees to indemnify the COUNTY for any and all damage caused by its negligence to the COUNTY's property.

6.8 Termination. This agreement may be terminated by the COUNTY if:

(a) In the judgment of the COUNTY, it is unable to present an agricultural fair on the dates specified in this agreement.

(b) There is failure to make payment as required or violation of any term of condition provided for herein which LICENSEE, having been given written notice or any such violation, has failed to correct within a reasonable period of time;

(c) There occurs an assignment for the benefit of creditors by, or an institution of bankruptcy proceedings for or against, the LICENSEE;

(d) There is shown to exist fraud, collusion, or conflict of interest on the part of any of the parties and/or their agents in obtaining this agreement or carrying out the provisions hereof. For these purposes, the above terms are as defined by the laws of the State of Washington, including, but not in lieu of these laws, conflict of interest is also defined to include the giving or receiving of any gratuity or the entering of any employment relationship between a COUNTY officer or employee and the LICENSEE that is not first disclosed and approved by the COUNTY in public meeting.

(e) There is compelling governmental need for the premises which the COUNTY determines is inconsistent with the privileges granted herein.

(f) Termination by the COUNTY as otherwise provided for in this agreement.

6.9 Termination Rights. In the event of termination, the LICENSEE shall be obligated to pay all sums due and owing at the date of termination and the COUNTY shall not be liable for any damages resulting from the termination.

6.10 Agreement is Personal. It is agreed that the personal and business integrity of LICENSEE's officers and directors is a major consideration on the part of the COUNTY in entering into this agreement, and that the agreement is personal to LICENSEE and may not be assigned, delegated, transferred or seized by or through any legal proceedings, either voluntarily or involuntarily without express written approval of the COUNTY.

6.11 Independent Contractor. LICENSEE agrees that LICENSEE will perform services under this agreement as an independent contractor and not as an agent, employee, or servant of COUNTY. The parties agree that LICENSEE and its employees are not entitled to any benefits or rights enjoyed by employees of COUNTY. COUNTY specifically has the right to direct and control LICENSEE's own activities in providing services in accordance with the specifications set out in this agreement. COUNTY shall only have the right to ensure performance. LICENSEE agrees that neither it nor its employees, agents, sub-contractors or sub-Licensees shall in any manner represent itself or themselves or permit itself or themselves to be represented to the public as an agent of the COUNTY.

6.12 Modifications. This agreement may not be modified orally and modification must be accomplished with the same formalities as are required for the execution of this agreement.

6.13 Correspondence. All correspondence concerning this agreement to be forwarded to Pacific County Board of County Commissioners, P O Box 187, South Bend, WA 98586 for the COUNTY and to Haworth Family Shows, Inc. CARNIVAL COMPANY, 3104 N E Glisan Street, Portland, OR 97232 for the LICENSEE.

This agreement constitutes the whole and entire agreement between the parties.

Dated this _____ day of _____, 2011.

PACIFIC COUNTY
BOARD OF COMMISSIONERS

Norman B. Cuffel, Chairman

Jon C. Kaino, Commissioner

Lisa Ayers, Commissioner

ATTEST:

Clerk of the Board

Date

HAWORTH FAMILY SHOWS, INC.

Maurice A. Haworth, President 3-3-11
Date

APPROVED AS TO FORM:

David Burke, Prosecuting Attorney 3/16/11