

AGREEMENT
between
THE CITY OF COCONUT CREEK
And
BIG FUN, INC.
for
AMUSEMENT RIDES AND CONCESSION SERVICES
RFP NO. 11-15-23-11

THIS AGREEMENT is made and entered into this _____ day of _____, 2024 by and between the **CITY OF COCONUT CREEK**, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and **BIG FUN, INC.** a Florida corporation with offices located at 3397 NE Jeanette Dr., Jensen Beach, FL 34957 (the "Vendor") to provide **AMUSEMENT RIDES AND CONCESSION SERVICES** pursuant to **RFP NO. 11-15-23-11**.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Vendor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the contract of RFP No. 11-15-23-11, all addenda issued prior to, and all modifications issued after execution of this Agreement, and any subsequent properly executed amendments to any of the aforementioned documents. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein. In the event of a conflict between the aforementioned documents, this Agreement will control, followed by the RFP documents, and addenda, in that order.

2) The Work

The Vendor shall perform all work for the City required by the contract documents and as set forth below:

- a) Vendor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Vendor agrees to review the City's existing Debris Management Plan and provide recommendations and proposed text changes to update the plan to be in compliance with current requirements at no additional cost to the City.
- c) The vendor shall ensure that when its work is located at any park, playground, or other place where children regularly congregate it employs only properly screened and background checked personnel on City property, as required by Chapter 435, Florida Statutes, and Section 943.04351, Florida Statutes.
- d) Vendor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Vendor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the

work. Vendor shall at all times have a competent supervisor on the job site to enforce these policies and procedures at the Vendor's expense.

- e) Vendor shall provide the City with seventy-two (72) hours written notice prior to any schedule change with the exception of changes caused by inclement weather.
- f) Vendor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Vendor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) Contract Price

The Agreement shall be performed pursuant to RFP No. 11-15-23-11. Pricing shall be as per Attachment "A" Schedule of Proposal Prices. The City can make a la carte ride choices based on the available budget and the preferences of the Community.

4) Contract Term

The initial Agreement period shall be for three (3) years. The City reserves the right to extend the Agreement for two (2) additional one (1) year periods, providing both parties agree to the extension; all the terms, conditions and specifications remain the same; and such extension is approved by the City. Any warranty associated with this Agreement may have its own contract and terms based on this solicitation or can be added to the Agreement at the City's discretion. Vendor shall give written notice to the City not less than ninety (90) days prior to renewal date of any adjustment in the initial Agreement amount. Agreement renewal shall be based on satisfactory performance, mutual acceptance, and determination that the Agreement is in the best interest of the City.

5) Contract Extension

In the event services are scheduled to end because of the expiration of this Agreement, the Vendor shall continue the service upon the request of the Contract Administrator. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing Agreement. The Vendor shall be compensated for the service at the rate(s) in effect when the City invokes this extension clause.

6) Agreement Subject to Funding

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

7) Remedies

a) **Damages**

The City reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the Vendor to perform in accordance with the requirements of this Agreement, or for losses sustained by the City resultant from the Vendor's failure to perform in accordance with the requirements of this Agreement.

b) **Correction of Work**

If, in the judgment of the City, work provided by the Vendor does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the City reserves the right to require that the Vendor correct all deficiencies in the work to bring the work into conformance without additional cost to the City, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The City is the

sole judge of non-conformance and the quality of workmanship.

8) Independent Contractor

Vendor is an Independent Contractor under this Agreement. Personal services provided by the Vendor shall be by employees of the Vendor and subject to supervision by the Vendor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Vendor.

9) Non-Exclusive Agreement

The services to be provided by Vendor pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude City from engaging other firms to perform the same or similar services for the benefit of City within City's sole and reasonable discretion.

10) Warranties of Vendor: Vendor hereby warrants and represents as follows:

- a) At all times during the term of this Agreement, Vendor shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary for the performance under this Agreement.
- b) At all times during this Agreement, Vendor shall perform its obligations in a prompt, professional and businesslike manner.

11) Insurance Requirements

The Vendor must assume full responsibility and expense to obtain all necessary insurance as required by the City of Coconut Creek. The Vendor (or any subvendor) must not commence work under this Agreement until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The certificate must name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members; and that such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured must not operate to increase the insurer's limit of liability. All insurance policies herein required of the Vendor must be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and must be executed by agents, thereof that are duly licensed as agents in Florida. The Vendor will ensure that all subvendors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Policies must be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation. Throughout the term of this contract, Vendor and/or any and all subvendors or anyone directly or indirectly employed by either of them must maintain in force, at all times, insurance as follows:

a) Workers' Compensation

If the Vendor is required to go on to City of Coconut Creek property to perform work or services as a result of this contract, it must have the statutory limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of \$100,000.00 each accident. The Vendor's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Vendor will be responsible for the payment of all deductibles and self-insured retentions. The City requires that the Vendor purchase a bond to cover the full amount of the deductible or self-insured retention.

- b) **General Liability**
Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance must be written in an “occurrence” based format.
- c) **Automobile Liability**
Comprehensive or Business Automobile Liability insurance with limits not less than \$500,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverage’s for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance must be written in an “occurrence” based format.
- d) **Professional Liability / Errors and Omissions Coverage (If Applicable)**
If the Vendor is to provide professional services under this Agreement, the Vendor must provide the City with evidence of Professional Liability insurance with, at a minimum of \$1,000,000.00 per occurrence and in the aggregate. “Claims-Made” forms are acceptable for Professional Liability insurance. Coverage must include all claims arising out of the Vendor’s operations or premises, any person directly or indirectly employed by the Vendor, and the Vendor’s obligations under indemnification under this contract. Vendor acknowledges that the City is relying on the competence of the Vendor to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to Vendor’s negligent errors and omissions, Vendor must promptly rectify them at no cost to City and will be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions.

12) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses. Notice shall be deemed received by the party for whom it is intended after the USPS certified mail process is completed and/or hand delivery.

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

VENDOR

Michael Doolan, President
Big Fun, Inc.
PO Box 699
Jensen Beach, FL 34958
Phone: 772-285-2208
Email: MDoolan@bellsouth.net

13) Third Party Beneficiaries

Neither Vendor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement

and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

14) Signatory Authority

The Vendor shall provide the City with copies of requisite documentation evidencing that the signatory for Vendor has the authority to enter into this Agreement.

15) Merger; Amendment

This Agreement constitutes the entire Agreement between the Vendor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Vendor and the City.

16) Disentanglement

Vendor will complete the transition of any terminated work from Vendor and its subvendors to City and/or any replacement providers City designates (collectively, the "Replacement Provider"), without causing any interruption of or adverse impact on the work, any other services and/or services provided by Third Parties (the "Disentanglement"). Without limiting the aforementioned obligations, Vendor will:

- a) Cooperate by promptly taking all steps required to assist City in completing the Disentanglement related to the work it had previously performed.
- b) Provide all information regarding the work that these parties will need to perform the Disentanglement.
- c) Promptly and orderly conclude all work as directed. This may include the documentation of work in progress and other measures to provide an orderly transition as set forth in Labor Harmony.

17) Labor Harmony

Vendor agrees that all labor employed by Vendor, its agents or subvendors for work on City property shall be in harmony with all other labor being used by City or other contractors working on City's property. Vendor agrees to give City immediate notice of any threatened or actual dispute and will provide assistance as determined necessary by City to resolve any such dispute. Vendor, its agents or subvendors, shall remove from City's property any person objected to by City in association with the work.

18) Attorney's Fees

If a party institutes any legal action to enforce any provision of this Agreement, they shall be entitled to reimbursement from the other party for all costs and expenses, including reasonable attorney's fees incurred by them, provided they are the prevailing party in such legal action, and provided further that they shall make application to the court or other tribunal, for an award of such costs and expenses.

19) Discriminatory Vendor List, Pursuant to § 287.134(2)(a) and (b) and (3)(a), Florida Statutes

Vendor hereby acknowledges its continuous duty to disclose to the City if the Vendor or any of its affiliates, as defined by Section 287.134(1) (a), Florida Statutes, are placed on the Discriminatory Vendor List. Pursuant to Section 287.134(2)(a), Florida Statutes: "An entity or **affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or** reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may

not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.”

20) Prohibited Telecommunications Equipment

Vendor represents and certifies that it and its applicable subvendors do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. By executing this Agreement, Vendor represents and certifies that Vendor and its applicable subvendors shall not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the City for the entire duration of this Agreement. If Vendor is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subconsultant at any tier or by any other source, Vendor must promptly report the information in 40 CFR § 52.204-25(d)(2) to City.

21) Environmental and Social Government and Corporate Activism

Pursuant to Section 287.05701, Florida Statutes, as may be amended, the City cannot give preference to a Vendor based on social, political or ideological interests as defined in the statute. Vendor is also prohibited from giving preference to any of its subcontractors based on the above referenced factors. Violations of this Section will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

22) Joint Preparation

This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

23) Interpretation

The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

24) Signatory Authority

Upon request, the Vendor must provide the City with copies of requisite documentation evidencing that the signatory for Vendor has the authority to enter into this Agreement.

25) Counterparts and Multiple Originals

This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which is hereby deemed to be an original, but all of which, taken together, constitutes one and the same agreement.

26) Severability; Waiver of Provisions

Any provision in this Agreement, Solicitation, and any document that forms a material part of the agreement between the Vendor and the City, that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision

by either party will not constitute a waiver of that provision nor will it affect the enforceability of that provision or of the remainder of the agreement.

27) Data Management; Data Security Standards

Vendor must agree to comply with the City's written demands regarding cooperation (and any applicable financial responsibilities) for timely data breach incident reporting, response activities/fact-gathering, public and other governmental agency notification requirements, severity level assessment, after-action reporting. Consistent with Sections 282.3185(5) & (6), and 501.171, Florida Statutes, as amended from time to time. And specifically in the context of data breaches that involve Protected Health Information pursuant to Health Insurance Portability and Accountability Act (HIPAA), Vendor must comply with all requirements of the Health Information Technology for Economic and Clinical Health Act (HITECH); Section 105 of Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA); and 45 C.F.R. Parts 160, 162 and 164 and Final Omnibus Rule eff. March 26, 21 2013). To ensure safety of personal data, Vendor must comply with the 2016 European Union's General Data Privacy Regulation (GDPR) that became effective in the European Union on May 25, 2018. For any system integration between the City's network systems and that of the Vendor, the Vendor hereby agrees to comply with ISO/IEC 27001 for its internal system, and any integration with the City's network and information technology systems.

28) Waiver of Jury Trial

BY ENTERING INTO THIS AGREEMENT, EACH OF VENDOR AND THE CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT OR SOLICITATION AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL WILL BE LIABLE FOR THE REASONABLE ATTORNEY'S FEES AND COSTS OF THE OTHER PARTY CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS MUST BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

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BIG FUN, INC

ATTEST:

Big Fun, Inc.

(Corporate Secretary)

Michael Doolan, President

Date

Print Name of Corporate Secretary

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF: Florida

COUNTY OF Miami- Dade:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, _____, by _____ as _____ for _____.

Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

ATTACHMENT "A"

CITY OF COCONUT CREEK AMUSEMENT RIDES AND CONCESSION SERVICES RFP NO. 11-15-23-11

SCHEDULE OF PROPOSAL PRICES

Additional Terms:

- A. All rides are priced individually and a la carte.
- B. All rides may not be available for certain dates.
- C. The vendor shall provide electric generator power to the following fields: three (3), four (4), and the East/West.
 - Big Fun, Inc. shall provide electric generator service including fuel charge at no additional cost to the City for the concession field denoted as the East/ West field.
- D. City will direct the locations of the amusement rides.
- E. The Vendor will provide concession services to the East/West field.
- F. One hundred and twenty (120) food vouchers will be provided by the Vendor for the Vendor's concessions only.
- G. When additional rides become available, an updated list will be provided.
- H. If a contracted ride becomes unavailable, it will be replaced with a ride of equal or greater value at no additional cost to the City. No bumper cars.
- I. The Vendor shall provide proper perimeter fencing per manufacturer requirements of each ride for the annual Butterfly Festival, which shall be inclusive of delivery, set-up, removal, pick-up, and all labor costs pertaining to the handling of the fence.
- J. The City may supplement any desired service for the Butterfly Festival not provided by the Vendor.
- K. City will provide wastewater tanks for the Vendor's concessions only.

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AMUSEMENT RIDE TYPE	QTY	UOM	PRICE
Fusion	1	each	\$ 7,155.00
Gondola	1	each	\$17,550.00
Music Fest	1	each	\$17,550.00
Pharaoh's Fury	1	each	\$13,050.00
Surf City Fun House	1	each	\$ 6750.00
Barrel of Fun	1	each	\$ 4,455.00
Rockin Tug	1	each	\$ 5,850.00
Bumble Bee	1	each	\$ 5,175.00
Fun Slide	1	each	\$ 5,175.00
Swinger	1	each	\$ 6,750.00
Baja Buggie	1	each	\$ 4,275.00
Carousel	1	each	\$ 8,955.00
Cross Country Adventure	1	each	\$ 4,275.00
CONCESSIONS			
Cotton Candy/ Popcorn	1	each	-\$250.00
Lemonade/ Corndog/ Funnel cake	1	each	-\$250.00
Pizza	1	each	-\$250.00
Burgers Fries Chicken Steak	1	each	-\$250.00
Chicken Tenders and Fries	1	each	-\$250.00
Elephant Ears	1	each	-\$250.00
Gyro	1	each	-\$250.00
Slushies'	1	each	-\$250.00
Amusement Rides Only			\$ 106,965.00
Concessions Only			\$ (2,000.00)
Amusement Rides and Concessions			\$ 104,965.00