

MEETING DATE: July 14, 2008

AGENDA ITEM: Authorization to Pay Guadagno and Sons a Down Payment and a Final Percentage of Ticket Sales for Supplying the Carnival Rides at the 2008 Fiesta La Ballona.

ATTACHMENTS

	<u>Page</u>
1. Copy of Agreement #2008-052 between the City and Guadagno & Sons	1-9

CITY OF CULVER CITY

Attachment 1

STANDARD FORM CONTRACT

WITH: GUADAGNO & SONS AMUSEMENTS

FOR: AMUSEMENT RIDES AT FIESTA LA BALLONA

THIS AGREEMENT is made and entered into by and between THE CITY OF CULVER CITY, a municipal corporation, hereinafter referred to as "CITY", and TONY GUADAGNO dba GUADAGNO & SONS AMUSEMENTS, INC., a California corporation, hereinafter referred to as "CONTRACTOR".

1. CONTRACTOR'S SERVICES. Contractor agrees to perform, during the term of this Agreement, the tasks, obligations, and services set forth in the "Scope of Service" attached to and incorporated into this Agreement as Exhibit "A".
2. TERM OF AGREEMENT. The term of this Agreement shall be from the effective date pursuant to Paragraph 27 of this Agreement and shall end upon Wednesday, August 27, 2008.
3. REVENUES. Pursuant to the terms of this Agreement, the compensation is set forth in the "Schedule of Compensation" attached to and incorporated into this Agreement as Exhibit "B". The compensation shall be paid at the time and manner set forth in said Exhibit "B".
4. TIME FOR PERFORMANCE. Contractor shall not perform any work under this Agreement until (a) Contractor furnishes proof of insurance as required under Paragraph 7 of this Agreement; and, (b) City gives Contractor a written and signed Notice to Proceed.
5. DESIGNATED REPRESENTATIVE(S)

Tony Guadagno shall be the designated Contractor Representative, and shall be responsible for job performance, negotiations, contractual matters, and coordination with the City. Contractor's professional services shall be actually performed by, or shall be immediately supervised by, the Contractor Representative.

6. HOLD HARMLESS. Contractor shall be responsible for any and all injuries to or death of any person, and for any and all damage to any and all real or personal property including City's or others, caused by or resulting from any acts, errors or omission of Contractor, its employees or its agents arising out of or connected with rendition of services hereunder. Contractor shall defend, hold harmless and indemnify City and its officers and employees from any and all liability claims, including costs, for damages to real or personal property, or personal injury or death, resulting

from Contractor's, its employees or agent's acts, errors or omissions arising out of or connected with rendition of services hereunder.

7. INSURANCE. Without limiting its obligations pursuant to Paragraph 6 of this Agreement, Contractor shall submit one or more duly executed certificates of insurance for Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) single limit coverage (endorsed by an endorsement, approved by the City Attorney), Automobile Liability in the minimum amount of \$500,000/\$500,000 and Workers Compensation insurance in statutorily required amounts.
8. INDEPENDENT CONTRACTOR STATUS. City and Contractor agree that Contractor, in performing the services herein specified, shall act as an independent Contractor and shall have control of all work and the manner in which it is performed. Contractor shall be free to contract for similar service to be performed for other employers while under contract with City. Contractor is not an agent or employee of City, and is not entitled to participate in any pension plan, insurance, bonus or similar benefits City provides for its employees. Contractor shall be responsible to pay and hold City harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of services performed hereunder.
9. NON-APPROPRIATION OF FUNDS. Payment due and payable to Contractor for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the City. In the event City has not appropriated sufficient funds for payment of Contractor services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.
10. ASSIGNMENT. This Agreement is for the specific services with Contractor as set forth herein. Any attempt by Contractor to assign the benefits or burdens of this Agreement without written approval of City shall be prohibited and shall be null and void; except that Contractor may assign payments due under this Agreement to a financial institution.
11. RECORDS AND INSPECTIONS. Contractor shall maintain full and accurate records with respect to all services and matters covered under this Agreement. City shall have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. Contractor shall maintain an up-to-date list of key personnel and telephone numbers for emergency contact after normal business hours.
12. RESERVED.

13. NOTICES. All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:
- To City: City of Culver City
 Attention: Pam Robinson
 4117 Overland Avenue
 Culver City, California 90230
- To Contractor: Guadagno & Sons Amusements
 Attention: Tony Guadagno
 12872 Valley View St. #7B
 Garden Grove, CA 92845
14. TAXPAYER IDENTIFICATION NUMBER. Contractor shall provide City with a complete Request for Taxpayer Identification Number ("TIN") and Certification, Form W-9, as issued by the Internal Revenue Service. Contractor's Tax Identification Number is _____.
15. PERMITS AND LICENSES. Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement, including, but not limited to, a Culver City business tax certificate.
16. APPLICABLE LAWS, CODES AND REGULATIONS. Contractor shall perform all work in accordance with all applicable laws, codes and regulations required by all authorities having jurisdiction over such work. Contractor agrees to comply with prevailing wage requirements as specified in the California Labor Code, Sections 1770, et seq.
17. PURCHASES OF SUPPLIES AND MATERIALS WITHIN CULVER CITY. For work performed, Contractor agrees to seek bids for supplies and materials from businesses located within the City of Culver City, with the intent to make purchases from these businesses if such purchases can be made at competitive prices.
18. RIGHT TO UTILIZE OTHERS. City reserves the right to utilize others to perform work similar to the services provided hereunder.
19. MODIFICATION OF AGREEMENT. This Agreement may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.
20. WAIVER. If at any time one party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.

21. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement to be performed by Contractor shall be construed to be both a covenant and a condition.
22. RIGHT TO TERMINATE. City may terminate this Agreement at any time, with or without cause, in its sole discretion, with thirty-days' (30-days') written notice.
23. EFFECT OF TERMINATION. Upon termination as stated in Paragraph 22 of this Agreement, City shall be liable to Contractor only for work satisfactorily performed by Contractor up to and including the date of termination of this Agreement, unless the termination is for cause, in which event Contractor need be compensated only to the extent required by law. Contractor shall be entitled to payment for services satisfactorily completed to date, based on the compensation set forth in Exhibit "B" attached hereto. Such payment will be subject to City's receipt of a close-out billing.
24. GOVERNING LAW. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.
25. LITIGATION FEES. If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.
26. INTEGRATED AGREEMENT. This Agreement represents the entire Agreement between City and Contractor, and all preliminary negotiations and agreements are deemed a part of this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement, and any subsequent successors and assigns.

27. EFFECTIVE DATE. The effective date of this Agreement is the date it is signed on behalf of City, and shall remain in full force and effect until amended or terminated; provided, that the indemnification and hold harmless provisions shall survive the termination.

TONY GUADAGNO,
GUADAGNO & SONS AMUSEMENTS

Dated: _____

By _____

Its _____

CITY OF CULVER CITY, CALIFORNIA

Dated: _____

By _____

Jerry Fulwood
City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

William LaPointe
Parks, Recreation & Community
Services Director

Carol A. Schwab
City Attorney

APPROVED AS TO FINANCING:

APPROVED AS TO BUSINESS
TAX CERTIFICATE:

Jeff Muir
Chief Financial Officer

Treasury Division

EXHIBIT A

CITY OF CULVER CITY

WITH: GUADAGNO & SONS AMUSEMENTS

FOR: AMUSEMENT RIDES AT FIESTA LA BALLONA

SCOPE OF SERVICE

In conjunction with City's Fiesta La Ballona celebration at Veteran's Park, Contractor shall provide the following:

- A. Amusement Rides:
 - 1. Contractor agrees to provide the following amount of rides:
Six (6) major, six (6) kiddie and two (2) spectacular if space allows. This count could change due to any governmental agency rules or regulations.
 - 2. Contractor shall provide all wristbands and tickets for sale.
- B. Hours of Operation:
 - Friday, August 22, 2008 hours of operation will be 6:00p.m. to 10:00p.m.
 - Saturday, August 23, 2008 hours of operation will be 12:00p.m. to 10:00p.m.
 - Sunday, August 24, 2008 hours of operation will be 12:00p.m. to 10:00p.m.
- C. Midway Concessions:
 - 1. Contractor will be allowed one food concession to include the sale of popcorn, nachos, cotton candy, snow cones, fried burritos, corn dogs and soft drinks.
 - 2. Contractor will be allowed to set up game booths.
- D. Facility Set Up by Contractor shall include:
 - 1. Electric power for all show rides and concessions to be provided by Contractor.
 - 2. Clean up crew to clean up ride, concession and booth area each and every night of the celebration will be provided by Contractor.
 - 3. 100 posters imprinted to committee specifications provided by Contractor and ordered by City by calling Colby Poster Company 213-747-5108.
 - 4. Contractor's personnel shall be adequate to provide full and complete operations, shall be professional in dress and behavior, and shall have been screened under "Megan's Law" by the Contractor.
 - 5. Contractor immediately contact a City representative, on-site, in cases of emergency, accidents or public disorder.
 - 6. All rides shall be in good repair, appearance and in safe and operable condition.

- E. Facility Set Up by City shall include:
1. A suitable location for the operation for the rides.
 2. Permits and licenses for operating rides.
 3. To have grounds properly prepared for the event and to arrange water, trash receptacles and hauling.
 4. To provide restrooms for Contractor and Contractor's personnel.
 5. To provide staffing for ticket sales booths during ride operation hours.
 6. To provide police protection.
 7. Allowing Contractor to enter grounds with their equipment on Wednesday, August 20, 2008, for proper set up of equipment because set up will require two full days before opening day for safety reasons.
- F. Facility Break Down and Clean up by Contractor shall include:
1. Within twenty-four (24) hours after the final time for operation of the rides, Contractor shall remove all equipment from City's property and repair any damage to the ride area caused by the ride, beyond reasonable wear and tear.
 2. Within twenty-four (24) hours after the final time for operation of the rides, Contractor shall remove clean up each ride, concession and booth area and repair any damage to the area, beyond reasonable wear and tear. Trash shall be placed in receptacles provided by City.

EXHIBIT B

CITY OF CULVER CITY

AGREEMENT WITH GUADAGNO & SONS AMUSEMENTS

FOR AMUSEMENT RIDES FOR FIESTA LA BALLONA

SCHEDULE OF COMPENSATION
(Fixed Cost Basis)

1. RIDE TICKET PRICES:

Prices charged for ride tickets sold on grounds during the Fiesta La Ballona shall be:

ONE DOLLAR (\$1.00) EACH,
TWENTY (20) TICKETS @ EIGHTEEN DOLLARS (\$18.00)
THIRTY TWO (32) TICKETS @ TWENTY-FOUR DOLLARS (\$24.00)
WRISTBANDS @ TWENTY DOLLARS EACH (\$20.00)

2. ADVANCED TICKET SALES:

Contractor will provide advance sale wristbands in any amount needed to be sold at the price of:

PRESALE WRIST BANDS for FIFTEEN DOLLARS (\$15.00)

These wristbands will be good on all rides. City will handle and be RESPONSIBLE for the advance sales and the MONIES COLLECTED and return of any unsold wristbands. Sale of these wristbands will cease before opening of the Fiesta. ALL WRISTBANDS NOT RETURNED WILL BE CONSIDERED SOLD.

3. GUARANTEED PAYMENT. For permitting Contractor to provide the rides described in this Agreement, City shall retain:

- A. Fifteen percent (15%) of the first Fifteen Thousand Dollars (\$15,000.00) of Ride Gross;
- B. Twenty (20%) of the second Fifteen Thousand Dollars (\$15,000.00) of Ride Gross; and
- C. Twenty-five (25%) of balance of Ride Gross.

Ride Gross shall mean the total amount City collects for ticket and wristband sales.

4. METHOD OF PAYMENT. The portion of the Ride Gross owed to Contractor as specified in Paragraph 3 above shall be paid by City check within thirty (30) days after the conclusion of the event and in accordance with City's normal demand procedure provided:
 - Contractor satisfactorily completes the equipment take down
 - Contractor submits an IRS W-9 form to City
5. MIDWAY CONCESSION PAYMENT. Contractor shall pay to City the sum of Fifty Dollars (\$50.00) per game booth and One Hundred Dollars (\$100.00) for the one approved concession stand prior to the start of the Fiesta La Ballona.
6. CONTROL OF FUNDS. City shall be responsible for sale of ride tickets and collection of monies for those tickets. An accounting of all ticket sales shall be made available to Contractor.
7. DONATION TO FIESTA. At the conclusion of the Fiesta, and after all payments have been made, contractor shall donate a total of one-thousand dollars (\$1,000) to the City to be used for the 2009 Fiesta La Ballona.