

## ***ENTERTAINMENT AGREEMENT***

*THIS ENTERTAINMENT AGREEMENT* (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Brown’s Amusements, Inc., an Arizona Corporation (“Brown’s”), and the City of Coolidge, an Arizona municipal corporation (the “City”).

For valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Parties agree as follows:

1.0 The Event. The City is organizing an event to be known and advertised as Calvin Coolidge Days, to be held at San Carlos Park in Coolidge, Arizona on October 5, 2018 through October 7, 2018 (the “Event”).

2.0 Brown’s Services; Location.

2.1 Brown’s agrees to furnish at the Event a combination of rides, shows, food and game concessions, which will be set up on a site approved and deemed suitable to both parties within the midway area of the Event (the “Midway Area”). Brown’s will furnish its rides, shows, food and game concessions for a period of three (3) days, commencing on October 5, 2018. Brown’s will be allowed to occupy the Midway Area for setup no earlier than October 2, 2018, and will vacate the Midway Area no later than October 8, 2018.

2.2 Except as otherwise set forth herein, Brown’s is hereby given an exclusive right during the Event to provide all rides, shows and concessions in the Midway Area.

2.3 Except as otherwise set forth herein, the City agrees that it shall not allow any other or similar rides, concessions, carnivals and/or circuses in the Midway Area for a period of at least thirty (30) days prior to the Event.

2.4 Local concessions permitted or operated by the City may also be located within San Carlos Park during the Event. While final determination of the location and appropriateness of such other concessions shall remain in the sole discretion of the City, the City agrees that it shall consult with Brown’s regarding its preferences and shall not place such concessions within the Midway Area without the prior permission of Brown’s.

2.5 Brown’s may, subject to the prior written approval of the City, which may be withheld, granted or denied in the City’s sole discretion, subcontract rides, shows and/or concessions as needed or desired by Brown’s; provided, however, that any such subcontracts must comply with all terms and conditions provided for in this Agreement.

3.0 City’s Responsibilities.

3.1 The City agrees to distribute such reasonable and appropriate advertising materials as may be from time to time supplied by Brown’s. Brown’s agrees that all such

materials shall refer to the Event as the “2018 Calvin Coolidge Days.” The City further agrees to make reasonable efforts to publish press releases in paper and/or on radio prior to the opening of the Event.

3.2 The City agrees to provide reasonable access to drinking water, trash containers, and portable toilets during the Event.

3.3 The City shall be responsible for providing security during the Event as the City deems appropriate, in its sole discretion.

#### 4.0 Brown’s Responsibilities.

4.1 Subject to the City’s approval and right of inspection set forth in Section 8, Brown’s shall be responsible for supplying its own power for all of its rides, shows and concessions. If Brown’s concessions need power, Brown’s agrees to provide such at the rate of \$12.00 per day, per concession.

4.2 Brown’s shall be required to furnish its own business licenses, permits and approvals as may be necessary for the lawful conduct of its business and warrants to the City that all such permits and licenses have been or will be obtained prior to the Event.

4.3 Brown’s shall keep the Midway Area reasonably clear of trash, debris, and garbage during its occupancy. Upon leaving the Midway Area, Brown’s shall leave the Midway Area in a reasonably-like manner as existed prior to Brown’s entry.

#### 5.0 Compensation to the City.

5.1 Brown’s shall pay to the City an amount equal to twenty percent (20%) of the adjusted gross revenues from sale of admission tickets to the various rides and shows provided by Brown’s, whether by advance sale (by the City or otherwise), onsite sale, or otherwise. For purposes of this Section 5.1, adjusted gross revenue shall be calculated after deducting any and all federal, state or local sales taxes from the gross ticket price. Additionally, for ride sales, adjusted gross revenue shall be calculated by deducting an additional amount equal to ten percent (10%) of the ticket sales price for overhead and insurance. No other deductions shall be made in the calculation of adjusted gross revenue.

5.2 The parties shall meet and confer the day after the Event’s closing (expected to be October 8, 2018) to determine Brown’s adjusted gross revenue and provide for payment to the City pursuant to Section 5.1.

6.0 Indemnification. Brown’s shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all claims, losses or liability, including attorneys’ fees, arising from injury or death to persons or damage to property occasioned by any act, omission, or failure of Brown’s, its officers, agents, employees, or subcontractors in

connection with the services provided by Brown's pursuant to this Agreement. This indemnification shall not apply to any damage resulting from the gross negligence of the City, its agents and employees. Brown's obligation under this provision shall not be limited in any way by any term of this Agreement, or the insurance limits. This Section 6.0 shall survive the expiration or termination of the Agreement.

7.0 Insurance.

7.1 Brown's shall provide and maintain in full force while this Agreement is in effect (i) General Liability and property damage insurance from a reliable insurance company authorized to transact business in Arizona in an amount of not less than \$2,000,000, for bodily injury or death to more than one person, one occurrence and (ii) workers' compensation insurance if applicable.

7.2 Brown's shall provide the City with a Certificate of Insurance showing the City as an additional insured.

8.0 Inspection. The City has the right, but not the duty, to conduct reasonable inspection of any of Brown's rides, electric connections, concessions or equipment. If, in the City's reasonable opinion, any of the rides, electric connections, concessions, shows or other equipment or entertainment provided by Brown's are unsafe or constitute a nuisance, obscenity or other inappropriate or objectionable material, the City may require Brown's to immediately shut down or modify such equipment, ride, show, concession or other material without liability therefor and without offset against the City's rights to ticket revenues or other rights under this Agreement.

9.0 Independent Contractor. Brown's shall at all times retain the status as an independent contractor. Brown's employees shall under no circumstances be considered or held to be employees or agents of the City, and the City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Brown's and Brown's shall save and hold the City harmless with respect thereto. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal association or organization of any kind between Brown's and the City, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement.

10.0 Miscellaneous.

10.1 Assignment. Brown's shall not assign any of its rights and duties under this Agreement without the prior written consent of the City. Any assignment to an affiliate or successor of Brown's shall not, however, relieve Brown's of its obligations, duties and liabilities pursuant to this Agreement and Brown's shall at all times remain fully responsible therefor.

10.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements,

written or oral, with respect to the subject matter of this Agreement. This Agreement may be modified only by a written instrument signed by both parties hereto.

10.3 Severability. In the event that any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect. Upon the determination of the invalidity, illegality or unenforceability of any provision of this Agreement, the parties will negotiate in good faith to modify this Agreement to give effect to the original intent of the parties as closely as possible.

10.4 Waiver. No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

10.5 Attorneys' Fees. In the event suit is brought (or arbitration instituted) or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any monies due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

10.6 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The parties agree that should any court action be commenced relating to this Agreement, that the Pinal County Superior Court shall be the appropriate and exclusive venue therefore.

10.7 Time. Time is of the essence of this Agreement.

10.8 Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. §38-511.

10.9 Undocumented Workers. Brown's understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, Brown's hereby warrants to the City that Brown's and each of its subcontractors, if any, will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject Brown's to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of Brown's, subcontractor or employees who works on this Agreement to ensure that Brown's or subcontractor is complying with the Immigration Warranty. Brown's agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random

verification of the employment records of Brown's and any of subcontractors to ensure compliance with Immigration Warranty. Brown's agrees to assist the City in regard to any random verifications performed.

Neither Brown's nor any subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract Brown's enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

10.10 Federal Regulations. Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Brown's acknowledges, by signature to this Agreement, that: Brown's is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; Brown's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

10.11 Arbitration. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Brown's and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Brown's shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Brown's. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

10.12 Israel Boycott. Contractor shall not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel in accordance with A.R.S. §35-393.01

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed on the day and year first written above.

CITY OF COOLIDGE,  
A municipal corporation

BROWN'S AMUSEMENT, INC.  
an Arizona corporation

By: \_\_\_\_\_  
Jon Thompson, Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
City Attorney