

**VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY**

INITIATED: Tourism & Event Commission **DATE:** February 18, 2003
(Name)

RECOMMENDATION FROM: N/A **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND ASTRO AMUSEMENT COMPANY, INC.", as presented.

AG

SUMMARY OF ITEM:

Approval of this resolution will authorize an agreement with Astro Amusement Company, Inc. for the 2003 Heritage Festival.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND ASTRO AMUSEMENT COMPANY, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Astro Amusement Company, Inc. (the "Provider"), for amusement services in relation to the 2003 Downers Grove Heritage Festival, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:
Attest: _____
Village Clerk

Astro Amusement Co.

Out of this World Entertainment!™

CONTRACT

This agreement made this 14th day of January, 2003 by and between Astro Amusement Company and the Committee Downers Grove Heritage Festival/ Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL. 60515

TO WIT: The Committee agrees to furnish a location to be known as Burlington Ave & Commuter Parking Lot for the erection and operation of a combination of rides, shows and concessions known as Astro Amusement. Said location of street, park, or parking lot is to be closed to traffic and parking and ready for occupancy not later than 7:00pm Tuesday June 24, 2003. The Committee also is responsible for and agrees to:

- Furnish and pay for any tax, permits or licenses that may be required for operation (excluding any state required permits/licenses).
- Furnish and pay for all water, lot and street privileges necessary for the satisfactory operating, conducting and placing of all attractions and concession (the location of which must be agreeable and acceptable to Astro Amusement).
- Handling and payment for all festival advertising and promotions including, but not limited to, newspaper, radio, television, posters, flyers, coupons, etc. Committee agrees to pay for and distribute the same.
- Provide competent people to sell and care for ride coupons and care for ticket boxes. The Committee is responsible for total dollar value of tickets issued to them and is responsible for any shortages that may be created from sales of tickets.
- Hire and pay for sufficient police protection and security.
- Provide and pay for 24 hour access to sanitary toilet facilities, starting Tuesday June 24, 2003 at 6:00pm.
- Provide and pay for trash receptacles (i.e. dumpsters) for midway clean up operations.
- Provide and pay (if necessary) for a parking area for semi-trailers, trucks and travel trailers at D.G. High School (subject to change).
- Provide and pay for a 24 hour access to water for sanitary conditions on the midway starting Tuesday June 24, 2003 at 6:00pm.

Astro Amusement Company is responsible for and agrees to:

- Furnish and pay for n/a poster cards with committee distributing these posters throughout the surrounding community.
- Furnish all electrical connections and electric current necessary for the power and illuminations of all rides, shows and concessions and other exhibits necessary for the conducting of said engagement. Said current to be for operating hours and to be supplied until all attractions are dismantled at the close of engagement.
- Furnish uniformed ride attendants and a ride foreman on the festival grounds at all times.
- Provide all ticket boxes and coupons for admittance.
- Provide a \$5,000,000 public liability and property damage certificate of insurance, as respects operations of Astro Amusement and for the negligence of the insured only. The Village of Downers Grove, its' officers, employees, and agents/volunteers will be added as additional insured. Astro Amusement assumes no liability for any accident that might be caused by streets or other locations being left open to local traffic or parking during erection, dismantling, or operation of equipment or to trespassers while equipment is not in operation. The Committee is responsible for this coverage.
- Clean up of its area nightly and at the close of the engagement with such disposal in designated dumpsters. Unsatisfactory clean-up or improper dumping may constitute a \$50.00 fine per occurrence if Astro fails to respond to fair warnings issued by committee.
- Allow Village to use Astro's office for purposes of carnival ticket sales accounting.
- Provide to the Village, 550 Astro Amusement Ride "Special" Passes at a discounted cost of \$1.00 per pass for purposes of corporate sponsorship.
- Sponsor 10 portable toilets.

IN CONSIDERATION OF THE ABOVE, Astro Amusement agrees:

To furnish, present and operate Midway attractions, consisting of a minimum of 5-6 Spectacular, 4-6 Adult, 9-11 Kiddie, depending on space available, amusement rides, concessions and, if available, paid admission shows at Downers Grove Heritage Festival for a period of 4 days, starting June 26 and ending June 29, 2003, for an event to be known as Downers Grove Heritage Festival. Astro will provide a minimum of 14 concessions not to exceed 20 concessions. The number of attractions can be changed with the village's prior written consent.

To pay the Committee the sum of \$350.00 based on a ride gross between \$0 to \$150,000.00, \$500.00 based on a ride gross from \$150K to \$225,000.00, \$600.00 based on a ride gross over \$225,000.00 for each concession or booth operated on the grounds during this engagement. The Village shall receive \$900.00 per food concession.

33 W. Higgins Road, Suite #4050, South Barrington, IL 60010 • Phone # 847-428-3631 • Fax # 847-428-3738
E-mail : astroamusement@ameritech.net • Website : www.astroamusement.com

To pay the Committee 40% \$0 to \$100,000.00; 43% \$100K to \$150,000.00; 45% \$150K to \$225,000.00; and 50% over \$225K of the gross receipts from monies derived from the sale of admission tickets at the various shows and rides after City tax and amusement tax is deducted, where applicable.

The settlement for the concessions and booths is to be made on closing day of the engagement. The settlement for the percentage on the shows and rides shall be made no later than Tuesday July 1, 2003. This agreement is fully assignable by **Astro Amusement Company** subject to the village's prior written consent.

The initial term of the Agreement shall commence on June 26, 2003 and terminate on June 29, 2003. For the immediate succeeding one (1) year following the initial term of the Agreement and in the event the Village seeks the services as described herein from a third party, **Astro Amusement Company** shall have the right of first refusal to negotiate competitive terms and conditions to provide such services or review and match any bona fide third party offer which the Village may obtain within 30 days of the third party offer.

IT IS FURTHER UNDERSTOOD AND AGREED:

It is understood and agreed that there shall be no other riding devices, shows, attractions or game concessions, such as, but not limited to, virtual reality, Climbing walls, arcade games, Space balls, Gyrotrons, Inflatable rides, Orbitron and other rides such as pony rides other than those furnished by Astro Amusement, except: those the Village has elected to bring in. Said Village attractions to be placed in an area away from the carnival midway area.

It is understood and agreed that **Astro Amusement** will have the exclusive privilege (in the carnival area) of selling out of its confection concession (popcorn wagon) the following items: cotton candy, popcorn, nachos, caramel corn, caramel apples, and corn dogs. **Astro Amusement** will also sell the following items without an exclusive privilege (in the carnival area): soda pop, coffee, bottled water, chips, hot dogs, and polish sausage. Exceptions include: Funnel Cake concession will also serve funnel cakes with toppings, curly fries, ribbon fries, fresh lemonade and soda.

It is further understood and agreed that **Astro Amusement** assumes no liability for any damage or personal injury that may directly or indirectly caused by streets or other location being left open to local traffic or parking during the erection, dismantling or operation of equipment or to trespassers while equipment is not in operation. **Astro Amusement** assumes no liability for reasonable or expected damage to landscape caused by the operation or set up/tear down and removal of any of its equipment.

The laws of the State of Illinois shall govern the terms and conditions of this Agreement. Any lawsuit or claim filed to enforce the terms and conditions of this Agreement shall be brought in the Circuit Court of DuPage. In the event of such legal action, **Astro Amusement** shall be entitled to recover its attorney's fees and costs incurred.

That there is no other contract or promise express or implied, written or verbal. That should any other additional agreement become necessary, the same shall be void unless reduced to writing and signed by the parties hereto.

This document along with the addendum attached hereto constitutes the entirety of the agreement between the parties.

That this agreement in part or entirety is subject to strikes, suspension of electrical service, failure of transportation facilities, Government decrees, fire, floods, wrecks, tornadoes, war, riots, public demonstrations, or other good and sufficient reasons beyond the control of either party hereto.

COMMENTS:

Ticket Prices for the 2003 season are to be determined.
Ride Specials will be as follows: THUR. Pay One Price \$15.00 per person 6-10pm; FRI. Kid Ride P.O.P. \$9.00 per person 10am - 3pm.
Pre-Sale 40 coupon sheet \$20.00 at Founders Day and Regular.

IN WITNESS WHEREOF, we set our hands and seals in good faith this _____ day of _____, 20_____.

BY: _____
The Committee, Title

ASTRO AMUSEMENT CO., INC.

BY: _____
The Committee, Title

BY: _____
Astro Amusement Company.

Sign all copies and return original to the address listed above.
(This contract is in full force and effect when confirmed by **Astro Amusement Company**.)

ADDENDUM

TO THE 2003 ASTRO AMUSEMENT CONTRACT BETWEEN ASTRO AMUSEMENT CO. ("ASTRO") AND THE VILLAGE OF DOWNERS GROVE ("VILLAGE")

The 2003 Astro Amusement Contract Between Astro Amusement Co. ("Astro") and The Village Of Downers Grove ("Village") for amusement rides, arcade, show and concession area that is dated _____ is hereby amended to include the following provisions:

INDEMNITY AND HOLD HARMLESS

To the fullest extent permitted by law, the Astro shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, (including any attorneys fees), which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Astro, its employees, or its subcontractors, and the Astro, its employees, or its subcontractors, and the Astro shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the Astro shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring the Astro to indemnify the Village for its own negligence. The Astro shall indemnify, keep and save harmless the Village only where a loss was caused by the acts or omissions of the Astro, its employees, or its Subsubcontractors.

NONDISCRIMINATION

(a) Astro shall, as a party to a public contract:

- (1) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (2) By signing this agreement, Astro certifies that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this proposal.

It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Astro shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 68 ILL. Rev. Stat. Secs. 1-101 et seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

VERIFICATION OF COVERAGE

Astro shall furnish the Village with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the Village before work commences. The Village reserves the right to require complete, certified copies of all required insurance policies, at any time.

EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Astro's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), Astro may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, Astro agrees as follows:

(1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

(2) That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

(3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.

(4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Astro's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with Astro in its efforts to comply with such Act and

Rules and Regulations, Astro will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

(6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

(7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, Astro will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Astro will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.
(Filed February 6, 1981, Effective February 9, 1981.)

ASSIGNMENT.

This Agreement or any part hereof shall not be transferred, conveyed or assigned by either party without the prior written consent of the Village of Downers Grove.

FREEDOM OF INFORMATION

Since the Village of Downers Grove is a municipal entity, this agreement will comply with any and all statutes that allow for the Freedom of Information, especially with regard to contracts.

NOTICES.

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given if hand delivered or express mailed, signature requested,

If to the Village of Downers Grove:

Village of Downers Grove
801 Burlington Ave
Downers Grove, IL 60515
Attn: Mary Scalzetti

If to Astro, as follows:

Astro Amusement Company
33 W. Higgins Road, Suite 4050
South Barrington, Illinois, 60010
Attn. Sandy Thebault

TERMINATION

In the event the Village Council determines that there will not be an amusement ride, arcade, show or concession area at the festival as described herein, this contract shall be null and void upon written notice from the Village to Astro. Such termination notice shall be provided to Astro ninety (90) days in advance of the event. If such termination occurs, the Village of Downers Grove, its Council members, officers, directors, employees, agents and attorneys shall be held harmless and shall not be liable for damages, any breach of contract, losses, liabilities or expenses (including attorneys fees) to Astro.

FORCE MAJORE.

The failure of either party hereto to comply with the terms and conditions hereof because of an act of God, strike, labor troubles, war, fire, earthquake, act of public enemies, terrorism, action of federal, state or local governmental authorities or for any reason beyond the reasonable control of such party, shall not be deemed a breach of this Agreement.

ENTIRE AGREEMENT.

- a. This Agreement contains the complete and exclusive statements of the Agreement between the parties and supersedes all prior agreements, understanding, communications and proposals, oral or written, between the parties relating to the subject matter of this Agreement.
- b. This Agreement may not be modified or amended except in writing executed by Astro and the Village, which refer to this Agreement.
- c. This Agreement does not constitute and will not be construed as constituting a partnership or joint venture between Astro and the Village. Neither party will have the right to obligate or bind the other party in any manner whatsoever.

IN WITNESS THEREOF, the parties have caused this Addendum to Contract to be executed by their duly authorized representatives.

VILLAGE OF DOWNERS GROVE

By: _____
Riccardo Ginex, Village Manager

Date: _____

Attest: _____
April Holden, Village Clerk

Date: _____

ASTRO AMUSEMENT CO.

By: _____
Sandy Thebault

Date: _____

Attest: _____

Title: _____

Date: _____