

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**JANUARY 23, 2007 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Extension of Heritage Festival Amusement Ride Contract	✓ Resolution Ordinance Motion Discussion Only	Mary Scalzetti, Director Community Events

**SYNOPSIS**

A resolution has been prepared to approve the renewal of the 2005 Amusement Ride Vendor Agreement, with Astro Amusement Company, Inc., to operate the amusement midway at the 2007 Heritage Festival.

**STRATEGIC PLAN ALIGNMENT**

Downers Grove Vision 2021 identified the principles of an *Authentic Downtown and Hometown Feeling* with the supporting means of: *Vibrant Community Focal Point for Bringing Residents and Guests together; Destination for Eating and Entertainment Both Indoor and outdoor and Strong Community Events Bringing Residents and Generations Together.*

**FISCAL IMPACT**

The FY07 General budget provides \$401,800 for Heritage Festival expenses and anticipates offsetting revenue of \$429,700. The Amusement Ride contract is projected to generate \$170,000 of revenue after expenses.

**RECOMMENDATION**

Approval on the February 6, 2007 consent agenda.

**BACKGROUND**

Through Request for Proposals issued in 2005, Astro Amusements Co., Inc. was awarded a contract as the Amusement Ride vendor for the 2005 Heritage Festival and given two one-year options for renewal as a part of the contract. The contract was extended in 2006. Per the Village purchasing policy this would be the second renewal to the original 2005 contract.

It is recommended that the Village extend the contract based upon the following:

- Astro has proven they can handle an event of our magnitude, and has provided quality service. Heritage Festival will be their main event that weekend.
- The contract calls for a ride revenue receipts split to the Village of, 40% of \$0 to \$100,000; 43% \$100K to \$150,000; 45% \$150K to \$225,000; and 50% over \$225K of the gross receipts.
- Astro employees having contact with children will be placed through a fingerprint/ background check with the cost will be split between the Village and Astro. At the Village's discretion, the background check for an individual Astro employee may be limited to a check of the National Sex Offender database (this is done in cases where fingerprints were reviewed the prior year.)
- Astro supports our event by donating in sponsorship \$500 for ten portable toilets, and 550 special tickets for sponsorship.
- Astro also provides the following: the Bear Show with seating area, the Misting Tents and the Pipe Organ, adding to the attractiveness of the midway area.

Prices for tickets in 2007 will be as follows:

- Thursday night pay-one-price will be \$17
- Friday morning kiddie pay-one-price will be \$12.
- 30 pre-sale tickets will be \$23.00 or on the date of the events 22 tickets will be \$22.00
- A single ticket will be \$1.00

As a side note, individuals who do not want to purchase the \$17 pay-one- price on Thursdays ride preview may use presale tickets purchased earlier in June or individual tickets available that evening.

These above fees reflect an increase in the pre-sale 30-sheet tickets at \$23.00 (these were \$22.00 in 2006) and the Friday kiddie pay-one-price at \$12.00 (these were \$10.00 in 2006), however, the kiddie ride pay-one-price hours will be extended by an additional hour, from 10:00am – 4:00pm. as compared to 2006.

The number of tickets needed to ride each attraction will remain the same as last year.

## **ATTACHMENTS**

2007 Addendum Astro Amusement Contract

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF THE 2007 ADDENDUM  
TO THE ASTRO AMUSEMENT CONTRACT BETWEEN  
ASTRO AMUSEMENT CO. AND THE VILLAGE OF DOWNERS GROVE**

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 Addendum Agreement (the "Agreement") between the Village of Downers Grove (the "Village") and Astro Amusement Co. (the "Astro") for the operation of the 2007 Heritage Festival amusement rides, 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

**2007 ADDENDUM**  
**TO THE ASTRO AMUSEMENT CONTRACT BETWEEN**  
**ASTRO AMUSEMENT CO. AND THE VILLAGE OF DOWNERS GROVE**

The 2005 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 2/15/05 is hereby amended to include the following provisions:

**INDEMNITY AND HOLD HARMLESS**

To the fullest extent permitted by law, 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 Astro, its employees, or its subcontractors, and Astro, its employees, or its subcontractors, and 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, Astro shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring Astro to indemnify the Village for the Village’s own negligence. Astro shall indemnify, keep and save harmless the Village only where a loss was caused by the acts or omissions of Astro, its employees, or its subcontractors.

**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, 775 ILCS 5/1-101 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 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.

### **BACKGROUND CHECKS & FINGERPRINTING**

The Village of Downers Grove and Astro will split the cost of background and fingerprint checks. The fingerprinting and background checks will be completed as stated in the original 2005 RFP. However, the Village reserves the right to perform a modified background check in lieu of a full background check. A modified background check consists of checking an amusement worker's background against the National Sex offender Data Base only.

The Village of Downers Grove reserves the right to refuse entrance to and the ability to work in any capacity at the Heritage Festival of any employee, agent or person working for Astro if the background of that individual indicates there is a risk to the safety of any person or class of persons who attends the Heritage Festival.

### **TICKET PRICES**

- (1). Ticket pricing for the 2007 festival will be as follows:
  - 1 coupon = \$1.00;

- Pre-sale tickets (sold between June 1, - June 20, 2007) a 30 coupon sheet = \$23.00;
- On event days, a 22 coupon sheet = \$22.00;
- The Thursday, June 21, 2007 (6-10pm) Pay One Price = \$17.00
- The Friday, June 22, 2007 (10am-4pm kiddie rides only) Pay One Price = \$12.00.

(2). The number of tickets needed to ride each ride will not change from 2005.

(3). Astro will donate 550 ride special tickets to be used for sponsors.

(4). Astro will also sponsor ten (10) portable toilets at \$500.00.

### **CONCESSIONS**

(1). If food concessions are placed in the ride area (which will have to be approved at a later date), the Village will be compensated \$900.00 per concession.

(2). If Game concessions are placed in the ride area (which will have to be approved at a later date), the Village will be compensated \$600.00 per game concession. Number of games not to exceed (14) fourteen.

### **REVENUE SPLIT**

#### **The Village will waive the Amusement license fee for the 2007 Heritage Festival.**

Gross receipts from monies derived from the sale of ride admission tickets will be paid to the Village as follows:

- 40% of the ride gross from \$0 to \$100,000;
- 43% of the ride gross from \$100,000 to \$150,000;
- 45% of the ride gross from \$150,000 to \$225,000;
- 50% of the ride gross over \$225,000.

### **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 (i.e. inclusive of the original 2005 Contract and this 2007 Addendum, only) 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. If there is any discrepancy or conflict between the terms of the Contract and this Addendum, this Addendum shall control.

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**

**ASTRO AMUSEMENT CO.**

By: \_\_\_\_\_  
Cara Pavlicek, Village Manager

By: \_\_\_\_\_  
Sandy Thebault

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
April Holden, Village Clerk

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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