

AGREEMENT

This Agreement is made, by and between **Utah County**, a political subdivision of the State of Utah, with its office located at 100 East Center Street, Provo, Utah 84606, hereinafter referred to as “County;” and **America’s Freedom Festival, Inc.**, a non-profit corporation, with its office located at 4626 North 300 West, Suite 300, Provo, Utah 84604, hereinafter referred to as “Festival.”

RECITALS

WHEREAS, County desires to encourage travel, tourism, and convention bureau programs within Utah County; and

WHEREAS, County is responsible for the implementation of travel, tourism, and convention bureau programs within Utah County; and

WHEREAS, County desires to obtain travel and tourism promotion benefits from Festival related to Festival’s 2020 4th of July Fireworks Show, and said tourism promotion and public relations benefits are intended to assist County in encouraging travel, tourism and convention bureau programs within Utah County; and

WHEREAS, Festival agrees to provide travel and tourism promotion benefits to County related to Festival’s 2020 4th of July Fireworks Show.

NOW THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between County and Festival as follows:

1. TOURISM PROMOTION BENEFITS.

Festival will provide the following tourism promotion benefits to County by expending the following identified funds from the payment provided to Festival by County pursuant to Section 2 hereof to promote tourism for Festival's 2020 4th of July Fireworks Show:

- a. \$8,000 for digital billboard revolving ads on I-15 (Including billboard company and design time for billboard ads);
- b. \$15,000 for on-line digital ads and marketing – Facebook, Instagram, YouTube, etc. (\$5,000 for initial blast; \$5,000 first 3 weeks of June; \$5,000 last week of June through 4th of July);
- c. \$2,000 for marketing consultants and media consultants for ad design.

Festival will submit to County a final report of the activities and accomplishments of Festival's 2020 4th of July Fireworks Show no later than September 1, 2020. This report shall include a summary of tourism promotion demographics and dates, and the economic impact of Festival's 2020 4th of July Fireworks Show in Utah County. Said report shall include additional impact criteria if such criteria are provided to Festival by County.

2. PAYMENT.

County agrees to pay Festival the sum of twenty-five thousand dollars (\$25,000.00) as consideration for the tourism promotion benefits provided to the County by Festival enumerated in Section 1 hereof. Payment from County to Festival shall be paid in two installments, with 50% to be paid on or before June 1, 2020 and the remaining 50% to be paid on or before August 1, 2020. Notwithstanding anything contained herein to the contrary, County shall have no obligation to provide the payment in the event that Festival's 2020 4th of July Fireworks Show is cancelled or restricted in size, events, or scope, and any payments made by County shall be immediately refunded by Festival.

3. INDEPENDENT CONTRACTOR.

- a. Festival states and affirms that it is acting as an independent contractor, holding itself out to the general public as an independent contractor for other contracts as it sees fit; that it advertises its services as it sees fit to the general public, maintains its office separate from County, and that this Agreement is not exclusive of other agreements, contracts or opportunities.
- b. The parties intend that an independent contractor relationship will be created by this Agreement. County is interested only in the results to be achieved, and the conduct and control of all work by Festival will lie solely with Festival. Festival is not to be considered an agent or employee of County for any purpose, and the employees of Festival are not entitled to any of the benefits that County provides for County's employees. It is understood that County does not agree to use Festival exclusively. It is further understood that Festival is free to contract for similar services to be performed for others while working under the provisions of this Agreement with County. Persons employed by County and acting under the direction of County shall not be deemed to be employees or agents of Festival.
- c. Both parties agree that Festival shall be deemed an independent contractor in the performance of this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation insurance. As such, Festival shall have no authorization, express or implied, to bind County to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for County except as expressly set forth herein. Festival shall furnish a Certificate of Insurance to County evidencing that Festival has workers' compensation insurance for Festival and all employees and volunteers of Festival.

4. INDEMNIFICATION.

Festival agrees to indemnify, save harmless, and release County, and all its officers, agents, volunteers, and employees, from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Agreement which are caused by any negligent act of Festival's officers, agents, volunteers, or employees. Festival agrees to maintain for the full term of this Agreement, general liability insurance for injury or death to persons or property in an amount not less than three million dollars (\$3,000,000) per occurrence. Festival shall provide County with Certificates of Insurance acceptable to County for the above-mentioned insurance policies, on or before 4:00 p.m. on June 1, 2020. Said coverage shall insure County against any and all liability of the County which may arise from the actions or omissions of Festival, its

employees, agents, guests or invitees. Failure of Festival to provide the above-mentioned Certificates of Insurance to County by 4:00 p.m. on June 1, 2020 shall result in the automatic termination of this Agreement.

5. GOVERNING LAW.

It is agreed by the parties that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Utah.

6. ENTIRE AGREEMENT.

This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

7. MODIFICATION OF AGREEMENT.

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

8. NONDISCRIMINATION.

America's Freedom Festival, Inc. agrees not to and shall not discriminate on the basis of race, color, religion, gender, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its applicable activities in violation of federal, state or local laws.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates listed below.

DATED this ____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH

ATTEST:
Amelia Powers Gardner
Utah County Clerk/Auditor

Tanner Ainge, Chair

By: _____
Deputy

APPROVED AS TO FORM:
David O. Leavitt
Utah County Attorney

By: _____
Deputy

DATED this ____ day of _____, 2020.

AMERICA'S FREEDOM FESTIVAL, INC.

By: _____

Its: _____