

COTTONWOOD HEIGHTS

RESOLUTION No. 2023-22

A RESOLUTION APPROVING AND RATIFYING A
DRONE SHOW PERFORMANCE CONTRACT WITH
OPEN SKY PRODUCTIONS, LLC FOR 2023 BUTLERVILLE DAYS

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 2 May 2023 to consider, among other things, approving a "Show Contract" (the "Agreement") with Open Sky Productions, LLC ("Provider") whereunder Provider would stage a drone show in connection with the City's "Butlerville Days" community event on or about 28 July 2023; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement is hereby approved and ratified, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2023-22, shall take effect immediately upon passage.

PASSED AND APPROVED effective 2 May 2023.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
(Vacant)	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ellen Birrell	Yea <input type="checkbox"/>	Nay <input checked="" type="checkbox"/>

DEPOSITED in the office of the City Recorder this 2nd day of May 2023.

RECORDED this 3rd day of May 2023.



OPEN SKY

DRONE LIGHT SHOWS

Show Contract

Open Sky Productions, LLC (the "**Company**")

Effective Date: May 2, 2023

Project Reference: Cottonwood Heights Butlerville Days

To: Ann Eatchel - Culture Manager of the city of Cottonwood Heights (the "**Client**")

Show Date(s): July 28, 2023

Launch Time: Between 9:30-10:00 pm local time

Show Size: 100 drones

Venue Name: Butler Park

Venue Address: 7500 S 2700 E, Cottonwood Heights, UT 84121

1) Company Services:

- a) Subject to the terms of this Agreement the Company will provide the following services (the "**Services**"):
 - i) FAA flight authorization
 - ii) Launch site check (as applicable)
 - iii) Show design with up to 1 custom animations approved by Client
 - iv) Programmed music soundtrack
 - v) Duration of show: 11-13 minutes
 - vi) Set up, installation, dismantle of equipment
- b) The Company will be responsible for providing the Special Flight Operations Certificate from the FAA and any other necessary flight authorizations, if required (the "**Company Permits**"). All permits, licenses and authorizations other than the Company Permits will be the sole responsibility of the Client. The Company timely shall advise the Client concerning the permits, etc. to be obtained by the Client.

2) Client Responsibilities:

- a) Access and permission to use the location specified for the show, in such form as the Company may require, in order to obtain the Company Permits and for event coordination, which must be provided at least seven (7) days prior to the scheduled event date.
- b) An appropriate site for the Services to be performed. Approval and confirmation of the Latitude and Longitude for the event site must be confirmed by the Client in writing upon signing this Agreement, as the site location and characteristics may influence the design and performance of the Services.
- c) All reasonably necessary security services to ensure the safety of Company equipment and personnel.
- d) All permits, licenses, and authorizations necessary for the event and Services, save and except for the Company Permits, subject to Section 1(b), above.

3) Price Includes:

- a) The Services described above;
- b) The Company Permits;
- c) Company travel to and from the event location; and
- d) (i) General liability insurance, including aviation liability coverage, in the coverage amount of at least \$2.0 Million, naming the Client; Cottonwood Heights Parks & Recreation Service Area; Unified Fire Authority; The Richard L. Guthrie Skate Park; and any other parties designated by the Client as additional insureds, and (ii) workers compensation coverage complying with applicable laws.

4) Price and Payment Terms:

- a) Price for Services: \$7,500 (Final Price) = \$17,500 (Standard Pricing) - \$10,000 (Local Discount)
 - i) 50% due as deposit upon signing of contract; and
 - ii) 50% due upon completion of Company Services

5) Additional Provisions:

- a) The Client will approve all renderings no later than 7 days before the show, which approval is final, and binding and the Company will perform the show substantially as presented.
- b) Company shall provide evidence to the Client of workers' compensation coverage of at least \$1,000,000
- c) Company shall provide evidence to the Client of general liability insurance, including aviation coverage, of at least \$2,000,000.
- d) The drone show may be upgraded as follows when additional funding or sponsors are secured:
 - i) \$2,500 - 100 drones, 6-8 custom designs, programmed music soundtrack
 - ii) \$5,000 - 100 drones, full custom show design, programmed music soundtrack
 - iii) \$7,500 - 150 drones, 6-8 custom designs, programmed music soundtrack
 - iv) \$10,000 - 150 drones, full custom show design, programmed music soundtrack
- e) If Company brings in a drone light show sponsor, the show will be upgraded to 150 drones and the sponsor's logo will be flown within the show. Additional sponsor benefits may be included at the discretion of the event organizers (Client).

6) General:

- a) The Terms and Conditions attached as Schedule "A" form part of this Agreement. By signing below the parties each acknowledge that they have had an opportunity to review such terms and conditions and the parties accept and agree to such terms.
- b) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature and/or transmitted in electronic form and the parties to this Agreement consent thereto.

THE PARTIES have entered into this Agreement as of the effective date specified above.

Open Sky Productions, LLC

By: Nate Mortensen
Nate Mortensen, CEO

Date: 3/29/2023

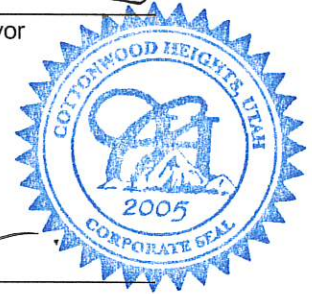
Cottonwood Heights, a Utah municipality

By: Michael T. Weichers
Michael T. Weichers, Mayor

Date: 5/02/23

ATTEST:

By: Paula Melgar
Paula Melgar, Recorder



Schedule "A" - Terms and Conditions

1. **Deposits.** A non-refundable deposit equal to fifty percent (50%) of the total price (the "Deposit") is required upon execution of this Agreement to secure the Client's booking. The balance shall be due and payable within 5 business days after the show. If a show is booked within two weeks (14 days) of the required date, then full payment is required upon booking.
2. **Payment.** All payments shall be made by way of a money transfer, wire transfer, or other form of immediately available funds. Any amounts not paid when due hereunder shall accrue interest at the rate of 12% per annum, compounding monthly.
3. **FAA Approval.** Drone shows are subject to the Company obtaining the Company Permits. If the Company Permits are not obtained for any reason (other than the failure of the Client to provide any information reasonably requested by the Company to obtain such Company Permits), this Agreement shall terminate, and the sole right and remedy of the Client shall be a refund of any prepaid amounts. If the Company Permits are not obtained due to the failure of the Client to provide any information reasonably requested by the Company, this Agreement shall terminate, without liability of the Company to the Client, and the Company shall be entitled to retain the Deposit as liquidated damages, which amount the parties agree is a reasonable estimate of the Company's damages in such circumstance.
4. **Performance.** The Client acknowledges that performance of the Services are subject to reasonable technical or other errors, and that the Services shall be deemed to be fully performed provided that at least 90% of the drones function substantially in the manner intended for the Services.
5. **Limited Warranty.** All Services to be provided hereunder will be provided in a good and professional manner and in accordance with applicable laws. The Company will not knowingly infringe upon the intellectual property rights of third parties.
6. **Disclaimer of Warranties.** The Company makes no representation or warranty whatsoever either expressed or implied, statutory, or otherwise other than as expressly set forth herein and the Client hereby waives the benefit of any such expressed or implied, statutory or other representations or warranties.
7. **Force Majeure.** The Company shall not be liable for any modification of the Services or any failure to perform or delay in performance under this Agreement if such modification, failure, or delay is due to any strike, lockout, riot, civil commotion, sabotage, embargo, epidemic, inclement weather, act of government, war, act of God or other cause beyond its reasonable control (each a "Force Majeure Event"). Without limiting the foregoing, the Client acknowledges that the performance of the Services and the safety of all persons present is dependent upon suitable weather conditions on the day of the event. The Company will have the sole discretion to determine if weather conditions are suitable for performance of the Services, and may delay, modify, or cancel the Services in their sole discretion.
8. **Cancellations.** The Client acknowledges that the Company will spend considerable time and resources in planning the Services, traveling to the event venue and in setting up to perform the Services. In the event of cancellation due to a Force Majeure Event or failure of client to fulfill their contractual obligations, the Client will be issued a credit (the "Credit") equal to the amount of the Deposit less any expenses incurred prior to cancellation, including but not limited to labor costs, fees for Company Permits and other expenses. The Credit may be applied to a future event to be scheduled within one (1) year of the date of the original event date. Future event dates will be scheduled based on availability at the time of booking. Any unused credits will expire one (1) year following the date of the original event. The foregoing credit shall be the Client's sole right in the case of any Force Majeure Event and in no case will the Client be entitled to any refund of any amounts paid.
9. **Insurance.** The Company will maintain and keep in force during the term of this Agreement general liability insurance, including aviation insurance, including coverage for personal injury, products liability, and contractual liability, in the amount equivalent to at least USD \$2,000,000.00.
10. **Limitation of Liability.** The aggregate liability of the respective parties, and their officers, directors, employees, agents, and consultants (who shall collectively be included in the definition of the "Company" or "Client" for purposes of this section), whether arising under this agreement, contract, tort, negligence, statutory liability or other legal theory, shall be limited to the direct and actual money damages effectively incurred by the indemnified party. The Client is a governmental entity who is subject to the Governmental Immunity Act of Utah, Utah Code Ann. 63G-7-101 et seq. Nothing in this Agreement shall waive any defenses or limits of liability available under that immunity act or other applicable law.
11. **Mutual Indemnity.** The Company agrees to defend, indemnify and hold harmless the Client, its employees, agents, invitees and/or volunteers from any claims, demands, causes of action, liability, loss, property damage or any type of damage and/or injury (to property or person, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state or local government body or agency, arising out of the services provided by the Company. The Client agrees to defend, indemnify and hold harmless the Company, its' employees, agents, invitees and/or volunteers from any claims, demands, causes of action, liability, loss, property damage or any type of damage and/or injury (to property or person, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state or local government body or agency, arising out of or incident to any acts, omissions, negligence, or conduct of the Client, its personnel, employees, agents, contractors, or volunteers in connection with or arising out of the Client's negligence, or intentional acts or failure to act, arising out of this Agreement.
12. **Termination.** Without limiting any other rights or remedies available at law or in equity or otherwise, either party may terminate this Agreement if the other party:
 - (a) Is in breach or default of any of its obligations under this Agreement and such breach or default continues unrectified for ten (10) days following the provision of written notice of such breach or default.
 - (b) Enters into proceedings in bankruptcy or insolvency, makes an assignment for the benefit of its creditors, is adjudged to be bankrupt or insolvent, a petition is filed against such party under a bankruptcy law, corporate reorganization law, or any other law for the relief of debtors or similar law or a receiver, trustee or similar person is appointed with respect to such party's assets; or
 - (c) Ceases to carry on its business.
13. **Assignment.** Neither party shall have the right to transfer or assign this Agreement or any rights, remedies, obligations or benefits hereunder without the prior written permission from the other party.
14. **Waiver.** The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default and shall not act to amend or negate the rights of any party.
15. **Severability.** Any provision of this Agreement prohibited by or unlawful or unenforceable under any applicable law shall be ineffective without invalidating the remaining provisions of this Agreement; provided, however, that to the extent that the provisions of any such applicable law can be waived, they are hereby waived by the parties.
16. **Relationship.** The relationship between the Company and the Client will, at all times be one of independent contractors and nothing herein shall be construed as implying a partnership or joint venture relationship.

17. **Headings.** The inclusion in this Agreement of headings and subheadings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
18. **Applicable Laws.** This Agreement shall be governed by the laws of the State of Utah. Jurisdiction and venue shall be the Third Judicial District Court in and for Salt Lake County.
19. **Entire Agreement.** This Agreement contains the entire understanding between the parties and other than as expressly set forth herein there are no other terms, conditions, representations, or warranties of any kind. This Agreement may not be modified except by another agreement, in writing, signed by both parties to this agreement.