



## CENTERVILLE CITY COUNCIL AGENDA

**NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY COUNCIL WILL HOLD A SPECIAL PUBLIC MEETING AT 7:30 PM ON JULY 1, 2020 AT THE ELECTRONIC ZOOM MEETING, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.**

*Meetings of the City Council of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.*

***Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Jacob Smith, Centerville Administrative Services Director, at 801-295-3477, giving at least 24 hours notice prior to the meeting.***

The full packet of backup materials can be found at <http://centerville.novusagenda.com/agendapublic>.

### **A. ROLL CALL**

### **B. BUSINESS**

#### **1. Air Parade Agreement**

Review proposed Services and Hold Harmless Agreement between Davis County, Centerville City, and Bountiful Flight, LLC (dba FLT Academy)

Zoom Meeting Information:

Join Zoom Meeting

[https://zoom.us/j/92899140218?](https://zoom.us/j/92899140218?pwd=eWxzZ245RHhteFRpS0gwOHBUUM4UT09)

[pwd=eWxzZ245RHhteFRpS0gwOHBUUM4UT09](https://zoom.us/j/92899140218?pwd=eWxzZ245RHhteFRpS0gwOHBUUM4UT09)

Dial: +1 346 248 7799

Meeting ID: 928 9914 0218

Password: 107438

### **C. CLOSED SESSION (Closed Meeting, if necessary, for reasons allowed by State Law, including, but not limited to, the provisions of section 52-4-205 of the Utah Open and Public Meetings Act, and for the Attorney-Client matters that are privileged pursuant to Utah Code ann. 78B-1-137, as amended)**

### **D. ADJOURNMENT**

Leah Romero  
Centerville City Recorder

## **CENTERVILLE**

### **Staff Backup Report**

**7/1/2020**

Item No. 1.

Short Title: Air Parade Agreement

Initiated By:

Scheduled Time:

### **SUBJECT**

Review proposed Services and Hold Harmless Agreement between Davis County, Centerville City, and Bountiful Flight, LLC (dba FLT Academy)

Zoom Meeting Information:

Join Zoom Meeting

<https://zoom.us/j/92899140218?pwd=eWxzZ245RHhteFRpS0gwOHBUUM4UT09>

Dial: +1 346 248 7799

Meeting ID: 928 9914 0218

Password: 107438

### **RECOMMENDATION**

Approve the proposed Services and Hold Harmless Agreement between Davis County, Centerville City, and Bountiful Flight, LLC (dba FLT Academy)

### **BACKGROUND**

Attached is a proposed Services and Hold Harmless Agreement between Davis County, Centerville City, and Bountiful Flight, LLC (dba FLT Academy). This Agreement proposes Centerville and Davis County as sponsors of the Air Parade to be organized and operated by Bountiful Flight, LLC (dba FLT Academy). Bountiful Flight is to obtain sufficient insurance for the event and to indemnify and hold harmless the County and City. In order to avoid and reduce liability, the City and County need to allow Bountiful Flight the power and authority to organize the event as they see fit. The Agreement is intentionally drafted to be as vague as possible about what the event will look like allowing Bountiful Flight to make the final decisions. To be consistent with the Agreement, it is my advice that we need to step back from the final details and arrangements for the event. This Agreement will need to be approved by the governing body of both governmental entities and the appropriate member, manager, or board of Bountiful Flight. The insurance certificates, terms, and coverage will need to be forwarded and reviewed by City and County insurance representatives to ensure sufficient and adequate coverage is provided. The insurance certificate and proof of named insureds is required to be provided to the parties by 5:00 p.m. on July 3, 2020. If not provided by that time, the Agreement proposes the event be cancelled.

**ATTACHMENTS:**

Description

- ▯ Service andRelease Agreement-(air parade)-2020

**SERVICES AND HOLD HARMLESS AGREEMENT FOR**  
**INDEPENDENCE DAY AIR PARADE ON JULY 4, 2020**

This Services and Hold Harmless Agreement for Independence Day Air Parade on July 4, 2020 (this "Agreement") is made and entered into by and between Davis County, a political subdivision of the state of Utah (the "County") and Centerville City, a municipal corporation of the state of Utah (the "City"), (hereinafter collectively referred to as "Sponsors"), and Bountiful Flight, LLC, dba FLT Academy, a Utah limited liability company ("Organizer"). The Sponsors and Organizer may be collectively referred to as the "Parties" herein or may be solely referred to as a "Party" herein.

**Recitals**

WHEREAS, most Fourth of July celebrations by cities and public entities within Davis County have been cancelled this year due to the COVID-19 pandemic and health recommendations associated with the pandemic to avoid public gatherings; and

WHEREAS, Sponsors would like to have some type of celebration for the citizens of Davis County to celebrate the Fourth of July holiday; and

WHEREAS, the Sponsors desire to enter into this Agreement with Organizer to provide services to organize and conduct an Independence Day Air Parade in Davis County on July 4, 2020, as more particularly set forth herein; and

NOW, for and in consideration of the mutual promises, obligations, and covenants contained herein, and for other good and valuable consideration, the receipt, fairness, and sufficiency of which are hereby acknowledged, and the Parties intending to be legally bound, the Parties do hereby mutually agree as follows:

1. Services. The Organizer shall organize and conduct an air parade to fly over Davis County on July 4, 2020 ("Air Parade"). The Air Parade shall consist of airplanes flying over each city within Davis County and may include participation by the military to the extent approved by such entities. The services to be provided by Organizer under this Agreement shall include all aspects and arrangements necessary to conduct the Air Parade. The Organizer shall ensure that all participants are trained, authorized, and capable of participating in the Air Parade. The Organizer shall ensure that all participants sign a release and indemnification agreement releasing the Organizer and Sponsors of any liability as more particularly provided herein. The Organizer shall obtain all necessary and required permits and approvals from governmental and aviation entities.

2. Compensation. The Sponsors shall pay the sum of \$23,000 to the Organizer for organizing and putting on the Air Parade. The Sponsors shall pay to the Organizer half of the total compensation amount by July 3, 2020 and the other half by July 10, 2020. Payment shall be made by check or other payment mechanism acceptable to the Parties. The County agrees to contribute and pay to Organizer \$15,000 of the total compensation and City agrees to contribute and pay to Organizer \$8,000 of the total compensation. Organizer shall invoice and bill the Sponsors for the compensation required herein.

3. Independent Contractor. Organizer shall be responsible for providing all services, labor, materials, equipment, and supplies necessary for providing the services required herein and for organizing and conducting the Air Parade. Organizer shall perform all services contemplated herein as an independent contractor and nothing in this Agreement is intended to create a partnership, joint venture, or employment agreement between any of the Parties, either collectively or individually.

4. Assumption of Risk. Organizer specifically acknowledges and understands that the proposed Air Parade involves the use of aircraft and aviation activities that pose significant risks of serious personal injury, death, and property damage. Organizer is aware that the Air Parade involves hazardous activities. Organizer hereby acknowledges and assumes all risk of injuries or damage to persons or property related to the Air Parade and the services and activities provided under this Agreement.

5. Hold Harmless. Organizer hereby releases and holds harmless the Sponsors, their officers, directors, employees, volunteers, affiliates, agents, representatives, insureds, successors, and assigns, from any and all liability, actions, causes of action, claims or demands for damages, personal injuries, death, and property damage, or loss resulting from or in any way connected to the Air Parade and the services and activities directly or indirectly provided by Organizer in organizing and conducting the Air Parade. This waiver is on behalf of the Organizer and its officers, employees, volunteers, affiliates, agents, representatives, insureds, successors, and assigns.

6. Insurance. Organizer shall obtain and maintain during the term of this Agreement, at its sole expense, sufficient comprehensive general liability and personal injury insurance protecting the Organizer and Sponsors against any and all claims related to their activities for the Air Parade and all services to be provided under this Agreement in a sum not less than \$5,000,000 per occurrence. The Sponsors and their officers, directors, employees, volunteers, affiliates, agents, representatives, successors, and assigns shall be named as additional insureds on such policies. Proof of such insurance shall be provided to the Sponsors by 5:00 p.m. on July 3, 2020. In the event sufficient insurance coverage and/or proof of insurance is not provided to the Sponsors by the deadline specified herein, the Air Parade shall be deemed cancelled. In the event of cancellation, the Organizers shall be required to refund to the Sponsors all compensation paid to date.

7. Indemnification. To the fullest extent permitted by law, Organizer shall, at all times and at its sole expense, and on behalf of its officers, officials, owners, members, managers, employees, agents, representatives, contractors, volunteers, and any other person or persons under the supervision, direction or control of Organizer, indemnify, defend, and hold harmless the Sponsors and their officers, directors, employees, volunteers, affiliates, agents, representatives, insureds, successors, and assigns, from and against any and all claims, liability, losses, judgments, damages, injuries, demand, causes of action, penalties, costs, and expenses, whether known or unknown, including reasonable attorneys' fees ("Claims"), that may arise from, may be in connection with, or may relate in any way to the acts or omissions, negligent or otherwise, of the Organizer, whether or not the Claims are known or unknown, or are in law, equity, or otherwise. Such indemnification and hold harmless shall also include any Claims incurred or sustained by reason of, or resulting from: (i) Organizer's services and activities provided under or in any way connected with the Air Parade and the provisions of this Agreement; (ii) any breach or alleged breach of any of the warranties, representations, or agreements herein, any reliance by the Sponsors upon any such warranties, representations, or agreements, or any exploitation of the rights granted to Sponsors hereunder; (iii) any act or omission by Organizer or any person whose services or facilities shall be furnished by Organizer in connection with the services and activities; or (iv) the use of goods, equipment, vehicles, aircraft, or services furnished by Organizer, provided that such liability, claims, losses, damages, or expenses are not attributable to the gross negligence or willful misconduct of the Sponsors. No term or condition of this Agreement, including, but not limited to, insurance that may be required under this Agreement, shall limit or waive any liability that Organizer may have arising from, in connection with, or relating in any way to the acts or omissions, negligent or otherwise, of the Organizer. In the event an entity or person makes any claim or initiates any suit or proceeding associated with the Air Parade or the services provided by Organizer hereunder, Organizer shall give immediate written notice to the Sponsors. The Sponsors shall have the right to select counsel of their choice to defend Sponsors against

such a claim, suit, or proceedings. This indemnification clause and any insurance provided hereunder shall survive the termination of this Agreement.

8. Effective Date of this Agreement. The Effective Date of this Agreement shall be on the earliest date after this Agreement has been signed by all the Parties (the "Effective Date").

9. Term of Agreement. The term of this Agreement shall begin upon the Effective Date of this Agreement and shall, subject to the termination and other provisions set forth herein, terminate on July 5, 2020 at 11:59 p.m. (the "Term"). As noted herein, the insurance and indemnification clauses shall survive termination of this Agreement.

10. Termination of Agreement. This Agreement may be terminated prior to the completion of the Term by any of the following actions:

- a. The mutual written agreement of the Parties;
- b. By any Party after material breach of this Agreement;
- c. As otherwise set forth in this Agreement or as permitted by law, ordinance, rule, regulation, or otherwise.

11. Notices. Any notices that may or must be sent under the terms or provisions of this Agreement should be delivered, by hand delivery or by United States mail, postage prepaid, as follows, or as subsequently amended in writing:

To the City:

Centerville City  
Attn: City Manager  
250 N. Main Street  
Centerville, UT 84014

To the County:

Davis County  
Attn: Chair, Davis County Board of Commissioners  
P.O. Box 618  
Farmington, UT 84025

To the Organizer:

Bountiful Flight, LLC  
Attn: Dba FLT Academy  
1887 S 1800 West  
Woods Cross, UT 84087

12. Governmental Immunity. The Parties recognize and acknowledge that the Sponsors are covered by the *Governmental Immunity Act of Utah*, codified at Section 63G-7-101, et seq., *Utah Code Annotated*, as amended, and nothing herein is intended to waive or modify any and all rights, defenses or provisions provided therein.

13. No Separate Legal Entity. No separate legal entity is created by this Agreement.

14. Approval. This Agreement shall be submitted to the legislative bodies of the Sponsors and the authorized member, manager, or board of the Organizer for review and approval.

15. Survival after Termination. Termination of this Agreement shall not extinguish or prejudice either Party's right to enforce this Agreement, or any term, provision, or promise under this Agreement, regarding insurance, indemnification, defense, save or hold harmless, or damages, with respect to any uncured breach or default of or under this Agreement.

16. Waivers or Modification. No waiver or failure to enforce one or more parts or provisions of this Agreement shall be construed as a continuing waiver of any part or provision of this Agreement, which shall preclude the Parties from receiving the full, bargained for benefit under the terms and provisions of this Agreement. A waiver or modification of any of the provisions of this Agreement or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Agreement cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the Party whose rights will be diminished or adversely affected by the waiver.

17. Binding Effect. This Agreement is binding upon the Parties and their officers, directors, employees, volunteers, affiliates, agents, representatives, insureds, successors, assigns, and to all persons or entities claiming by, through or under them.

18. No Assignment. Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by any Party without the prior written consent of all of the other parties.

19. Entire Agreement. This Agreement constitutes and represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. This Agreement supersedes and cancels all prior agreements, negotiations, and understandings between the Parties, whether written or oral which are void, nullified and of no legal effect if they are not recited or addressed in this Agreement. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, including any elected officials or employees of the Parties, which are not contained in this Agreement and that no other Agreement, statement, or promise not contained in this Agreement will be valid or binding.

20. Amendments. Neither this Agreement nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. This Agreement and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by all the Parties.

21. Assignment Restricted. The Parties agree that neither this Agreement nor the duties, obligations, responsibilities, or privileges herein may be assigned, transferred, or delegated, in whole or in part, without the prior written consent of the Parties.

22. Choice of Law. This Agreement and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Agreement or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the state of Utah, without reference to conflict of law principals.

23. Jurisdiction. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action,

proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Agreement, or its formation or validity.

24. Venue. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Anyone who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing Party for its attorneys' fees, and the Party prevailing in any such dispute shall be awarded its attorneys' fees.

25. Severability. If any part or provision of this Agreement is found to be invalid, prohibited, or unenforceable in any jurisdiction, such part or provision of this Agreement shall, as to such jurisdiction only, be inoperative, null and void to the extent of such invalidity, prohibition, or unenforceability without invalidating the remaining parts or provisions hereof, and any such invalidity, prohibition, or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Agreement, which are not invalid, prohibited, or unenforceable, shall remain in full force and effect.

26. Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement shall be construed cumulatively, and none of the rights and/or remedies under this Agreement shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.

27. No Third-Party Beneficiaries. This Agreement is entered into by the Parties for the exclusive benefit of the Parties and their respective officers, directors, employees, volunteers, affiliates, agents, representatives, insureds, successors, assigns, and affiliated persons referred to herein. Except and only to the extent provided by applicable statute, no creditor or other third party shall have any rights or interests or receive any benefits under this Agreement.

28. Recitals Incorporated. The Recitals to this Agreement are incorporated herein by reference and made contractual in nature.

29. Headings. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

30. Authorization. The persons executing this Agreement on behalf of a Party hereby represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such Party.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same Agreement.

[Signature Pages Follow]

WHEREFORE, the Parties have signed this Agreement on the dates set forth below.

CENTERVILLE CITY

\_\_\_\_\_  
Mayor Clark A. Wilkinson

Dated:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Leah Romero, Centerville City Recorder

Dated:\_\_\_\_\_

DAVIS COUNTY

\_\_\_\_\_  
Chair, Davis County Board of Commissioners

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Davis County Clerk/Auditor

Dated: \_\_\_\_\_

BOUNTIFUL FLIGHT, LLC  
DBA FLT ACADEMY

\_\_\_\_\_  
Manager/Member

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary/Manager/Member

Dated: \_\_\_\_\_