

**MIDVALE CITY
CORPORATION RESOLUTION
2020-R-53**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH
FREEDOM LED, LLC FOR THE INSTALLATION OF A
LED MONUMENT SIGN AT MIDVALE CITY HALL.**

WHEREAS, on January 30, 2020, the World Health Organization declared the outbreak of a Novel Coronavirus Disease (COVID-19) as a public health emergency of international concern; and

WHEREAS, on March 13, 2020, the Midvale City Council declared a local emergency due to COVID-19; and

WHEREAS, on March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act was passed to provide financial assistance to public employers to deal with necessary expenditures incurred due to the public health emergency; and

WHEREAS, the Coronavirus Relief Fund is available to reimburse government recipients for necessary expenditures due to the COVID-19 public health emergency that were not accounted for in the government recipient's most-recently appropriated budget and that were incurred during the period between March 1, 2020 and December 30, 2020; and

WHEREAS, guidance issued by the U.S. Treasury Department indicates that necessary expenditures may include communications by local agencies related to COVID-19; and

WHEREAS, Midvale City is committed to utilizing a variety of communications tools to communicate important COVID-19 messages with the community; and

NOW, THEREFORE, be it resolved by the Midvale City Council as follows:

PART 1:

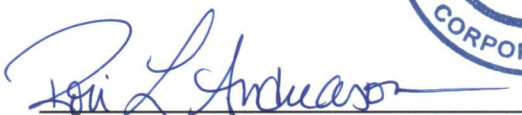
The Mayor is hereby authorized to sign TERMS & CONDITIONS AGREEMENT dated November 30, 2020 between Midvale City and Freedom LED, LLC, as shown in Exhibit A.

PART 2:

This resolution shall take effect immediately.

Passed and adopted by the City Council of Midvale City, State of Utah, this 8th day of December 2020.

Attest:


Rori L. Andreason, MMC
City Recorder




Robert M. Hale, Mayor

Voting by the City Council:	Aye	Nay
Quinn Sperry	<u>Absent</u>	
Paul Glover	<u>✓</u>	
Heidi Robinson	<u>✓</u>	
Bryant Brown	<u>✓</u>	
Dustin Gettel	<u>✓</u>	



TERMS & CONDITIONS AGREEMENT

Freedom LED, LLC

Freedom LED, LLC ("Freedom") is a Utah limited liability company in the business of designing, constructing and installing the best quality signs in the state of Utah. Freedom goes the extra mile to make clients happy and is proud of its excellent track record and reputation. This TERMS AND CONDITIONS AGREEMENT ("Agreement") is entered into by and between Freedom and "Purchaser" (the parties to the Purchase Contract) (collectively referred to as the "parties") as of the date signed by Purchaser, and includes the following terms and conditions:

1. This agreement is for specially constructed signage equipment, parts and LED signs. Upon acceptance, this Agreement is not subject to cancellation. Freedom shall not be responsible for any error, omissions or deficiencies in plans, designs, specifications or drawings furnished or accepted by Purchaser or for any defects or damages caused thereby. Any revisions to work in progress will be charged as necessary.
2. Freedom shall be responsible for securing all necessary governmental permits which are required for the installation of the signage equipment. Purchaser assumes all liability (for personal injury, property damage or otherwise) caused by the sign or by reason of it being on or attached to the real property where it is installed. Purchaser to secure necessary permission for use of all registered trademarks or copyrights and shall assume all liability for patent and trademark infringement. Purchaser agrees to defend, indemnify and hold Freedom harmless against any claim, loss, cost, liability, or expense resulting from infringement, asserted or actual, of patents, trademarks, copyrights, or otherwise.
3. State law does not allow Freedom or like vendors to engage in the electrical work in making the sign operational. Accordingly, Purchaser shall hire, and pay for, a licensed electrical contractor to install all necessary electrical wiring, outlets and connections to the sign from Purchasers' building meter and/or fusel panel, in accordance with all applicable code regulations.
4. Installation prices quoted are subject to increase where subsurface soil conditions affect foundations, subsurface obstacles (i.e. rocks) or where unforeseen fascia impediments (i.e. steel structural beams), are encountered.
5. Purchaser is responsible for all insurance(s) of the contracted signs when the contracted signs are on the Purchaser's premises and/or location as to where the signs are contracted/agreed to be installed.
6. As required by state law, Freedom identification tags, which include its name and logo in a form approved by Freedom, shall be affixed to each sign. Purchaser's removal or alteration of such tags shall void any warranty offered by Freedom. Any ropes, straps, bungee cords, or anything tied to or item that that bumps, rubs, scratches, or any other damage, will void all warranties. In the event of any other company should service, fix, touch, etc. will void all warranties. In addition, if Purchaser mounts any fixtures on the Sign, or sues a company other than Freedom to service the sign (unless authorized by Freedom), it will void all warranties.
7. Payments for items purchased under this Agreement are as follows: 50% deposit upon signing this Agreement ("Deposit"), and the remaining balance is due upon completion and acceptance by Purchaser. Freedom will consider a job complete when the contracted

sign(s) is installed, working correctly, and has been accepted by Purchaser. Purchaser hereby agrees to pay a late charge of 1%, per day, on all invoices not paid within ten (10) days of the job completion. Any credit cards used for deposits or balances of signs are not subject to cancellation.

8. If payment is not made pursuant to this Agreement, Purchaser agrees to pay Freedom's reasonable attorney fees and costs in connection with any overdue accounts, regardless of whether formal legal action is taken to collect those overdue accounts. This Agreement is not subject to cancellation upon acceptance, except in the event that Freedom is unable to secure a permit to begin work, in which event Freedom will make a full refund with the exception of any engineering or city filing fees paid. Due to the custom nature of the specialized products and materials used to build the sign(s), any deposits made pursuant to this Agreement are non-refundable. Delivery dates and times are subject to start after the Deposit is paid in full and proper permits have been issued by the city, landlords, and other necessary parties. Additionally, if payment is not made pursuant to this Agreement, Freedom may turn off and take control of the contracted sign(s). Freedom remains the owner of any contracted signs until such time that the balance is paid in full.
9. All applicable taxes payable under the laws of the state into which Freedom has property delivered or installed as mentioned herein, shall be added to the quoted "Purchase Price," which Purchase Price will be set forth in a separate Purchase Contract from Freedom. Purchaser shall pay the priced of these taxes on any and all signed contracts and will indemnify Freedom from the same.
10. Freedom will complete the contracted sign(s) by December 30, 2020, barring unforeseen circumstanced that may cause delay, including (not limited to): unforeseeable delays in shipping the products, labor disputes, natural disasters, acts of God, or inadequate payment of deposits.
11. Title to all signage equipment, parts and LED signs covered by this Agreement, whether or not a cash or lease order, shall remain in possession and control of Freedom LED and shall not be deemed to constitute a part of the real property to which it may be attached until the Purchase Price is paid in full. Purchaser expressly grants Freedom a UCC Security Interest Lien to all signage equipment, parts and LED signs, whether or not installed and attached to real property until payment is made in full. In the event of any default by Purchaser, including, but not limited to, payment of any amounts due and payable under this Agreement, Freedom may take any action to perfect or enforce its security interest at once (and without further notice or process of law) take possession of and remove, as and when it sees fit and wherever founds, all signage equipment, LED signs and parts used or intended for use in the construction of said signage equipment and any and all property called for in this Agreement without being liable for trespass or destruction of Purchaser's real or personal property. Any equipment that is repossessed can and will be sold immediately for any amount of money that Freedom sees fit to be able to mitigate Freedom's damages by offsetting amounts due for any unpaid balance. Under such circumstanced, the Purchaser's non-refundable deposit is completely forfeited.
12. In the event Purchaser fails to make any payment under the terms of the Purchase Contract or this Agreement, Purchaser grants Freedom (and its affiliates or assigns) a consensual lien to Purchaser's rights in the sign and any sign equipment. Freedom may enforce this consensual lien (as well as any statutory lien allowed by a contractor,

- ii. Additional Insured. Except for its Worker's Compensation Insurance policy, Freedom must list Midvale City as an additional insured on the insurance policies required under this Agreement.
- iii. Primary Insurance. Freedom's insurance policies are required to be primary, non-contributory, and not in excess of any insurance or self-insurance policies available to or maintained by Purchaser.
- b. Indemnification. Freedom agrees to indemnify and hold harmless Purchaser and the other Purchaser's officials, officers, employees, volunteers, and agents from and against all damages, liabilities, and claims relating to Freedom's performance under this Agreement.

Purchaser acknowledges that it has read this Agreement and agrees to each of the terms and conditions set forth herein, in addition to the terms and conditions set forth in the Purchase Contract.

Freedom Led, LLC

By: _____

Name: Carston McCullough

Date: 11/30/20

Title: Owner

Midvale City

By: _____

Name: Robert Hale

Date: 1 December 2020

Title: Mayor

Attest: Roi L. Anderson
City Recorder



mechanic, material man, or similar lien statute) to collect any balance owed and all amounts arising under the Purchase Contract or this Agreement. Purchaser expressly grants Freedom permission to file a notice of lien with any government entity Freedom deems necessary to protect or enforce the liens set forth in this Paragraph. In the event that Freedom files a lien against Purchaser with a government entity, Purchaser expressly waives any slander of title claim against Freedom, its affiliates or assigns.

13. In the event of any dispute concerning or arising this Agreement, Freedom at its sole election may give notice and require any dispute between the parties to be resolved through binding arbitration. Any arbitration shall be governed by the Utah Uniform Arbitration Act (UUAA). An arbitrator shall be an experienced neutral third-party agreeable to both the Purchaser and Freedom. Upon prevailing in arbitration, the prevailing party shall be awarded its attorney fees, expenses and costs incurred to arbitrate.
14. In no event will Freedom be liable to Purchaser for any lost profits, lost savings, or consequential, incidental, indirect, exemplary or other damages arising out of or relating, directly or indirectly, to Purchaser's inability to use the equipment or a breach of this Agreement, even if Freedom is advised of the possibility of such damages. Without waiving the foregoing, any damage(s) otherwise awarded to Purchaser directly arising under or indirectly relating to this Agreement shall be limited exclusively to the amount(s) actually paid to Freedom by Purchaser.
15. This Agreement shall be governed in accordance with the laws of the state of Utah (without regard to its choice of law provisions). Furthermore, the parties hereto agree that any dispute arising here from shall have a venue in the State of Utah, County of Salt Lake.
16. The parties agree this Proposal and Agreement constitute the entire agreement between them and that no other oral representations have been made. If any provision of the Agreement is held by a court or other tribunal having jurisdiction to be unenforceable, the parties intend that the remaining provisions shall be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.
17. Freedom offers Purchaser a five (5) year parts warranty on the Led sign through the LED sign manufacturer. Freedom also offers Purchaser a one (1) year labor warranty on the LED sign. Any warranty offered by Freedom must be express. In no event shall Freedom offer a "full" warranty. Freedom EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY, IMPLIED WARRANTY OF MERCHANTABILITY AND IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Any warranty offered by Freedom shall be voided if Purchaser causes damage to the LED sign or allows a party other than Freedom to service the LED sign.
18. Insurance and indemnification
 - a. Insurance.
 - i. Coverage Amounts. Freedom must retain, at a minimum, the following insurance coverages for the term of this Agreement:
 1. Commercial General Liability: \$2,000,000 combined single limit per occurrence and \$3,000,000 in the aggregate;
 2. Automobile Liability: \$1,000,000 combined single limit; and
 3. Worker's Compensation Insurance at statutory limits.