

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-42

A RESOLUTION APPROVING A PERFORMANCE CONTRACT WITH BIG DOOR ENTERTAINMENT FOR 2015 BUTLERVILLE DAYS

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 23 June 2015 to consider, among other things, approving a "Performance Contract" (the "Agreement") with Big Door Entertainment ("Contractor") whereunder the City would engage Contractor to provide a musical performance by "Foreign Figures" at the City's 2015 "Butlerville Days" community celebration on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; 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 the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Contractor is hereby approved, 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. 2015-42, shall take effect immediately upon passage.

PASSED AND APPROVED this 23rd day of June 2015.

COTTONWOOD HEIGHTS CITY COUNCIL

By  Kelvyn H. Cullimore, Jr., Mayor

ATTEST:

 Kory Solorio, Recorder

VOTING:

Kelvyn H. Cullimore, Jr	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 23rd day of June 2015.

RECORDED this 23 day of June 2015.

# Addendum to Big Door Entertainment Performance Contract

**THIS ADDENDUM** (this “*Addendum*”) is made effective 23 June 2015 between **BIG DOOR ENTERTAINMENT** for itself and on behalf of artist **FOREIGN FIGURES**, whose address is 210 North 1200 East, Suite 200, Lehi, UT 84045 (“*Producer*”), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Cottonwood Heights, UT 84047 (“*City*”). This Addendum augments and amends the provisions of the attached agreement (the “*Agreement*”) between Producer and the City concerning a musical production to be staged by Producer at City’s 2015 Butlerville Days community celebration (the “*Event*”) scheduled for 24 July 2015 (the “*Event Date*”). If there is any conflict or inconsistency between this Addendum and the Agreement, the provisions of this Addendum shall control.

Section 1.     **Setup Time.** Producer shall deliver its equipment to the stage area at the Event no later than 11:00 a.m. on the Event Date. City anticipates that the stage (the “*Stage*”) will be erected and ready for use by 1:00 p.m. on the Event Date, whereupon Producer may set up its equipment on the Stage and conduct a sound check. A final sound check may be conducted between 6:15 p.m. and 6:45 p.m. on the Event Date.

Section 2.     **Performance Time.** Producer shall perform (the “*Performance*”) between 6:45 p.m. and 7:45 p.m. on the Event Date. Another performance and a fireworks show by other providers are scheduled to commence at 8:30 p.m. and 10:00 p.m., respectively.

Section 3.     **Total Compensation.** Sections 1 and 2 of the Agreement are modified to clarify that the total compensation to be paid by City for the Performance and all of Producer’s services under the Agreement shall be a flat fee of \$1,000 (the “*Contract Price*”).

Section 4.     **Equipment; Supplies; Personnel.** Section 3 of the Agreement is modified to clarify that City only is required to (a) provide an elevated stage at an outdoor venue, equipped with lighting and electrical connections; (b) use reasonable diligence to assure that all City-provided equipment is in good working order for the Performance; and (c) provide two cases of bottled water and dinner for eight at the Event. City is not required to provide any other facilities, equipment, supplies or personnel under the Agreement except the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Section 5.     **Nonperformance.** If the Performance cannot occur due to force majeure events as described in Sections 4, 5 and 20 of the Agreement, notwithstanding that Producer is ready, willing and able to stage the Performance, then City shall pay one-half the Contract Price. If the Performance cannot occur due to illness, injury or other reasons affecting Producer such that Producer cannot stage the Performance, then City shall be excused from any obligation to pay any of the Contract Price.

Section 6.     **Advertising.** Section 7 of the Agreement is modified to clarify that City controls all advertising and publicity for the Event, provided that if any such advertising or publicity does more than name Producer and/or its artist for purposes of publicizing the

Performance, Producer shall have the right to review and pre-approve such advertising, etc., which approval shall not be unreasonably withheld, conditioned or delayed.

Section 7. **Recording, Etc.** Section 8 of the Agreement is modified to clarify that City has no control over Event attendees choosing to record, broadcast, photograph or otherwise reproduce any part of the Performance.

Section 8. **No Right to Sell Goods or Merchandise.** Section 9 of the Agreement is amended to clarify that Producer may not sell any programs, photographs, records, posters or other merchandise of any type or description at the Event.

Section 9. **Cancellation.** Producer’s right to cancel the Performance under sections 10 and 13 of the Agreement shall expire on 24 June 2015.

Section 10. **Change of Artist.** Section 11 of the Agreement is amended to clarify that Producer is not entitled to substitute another performer for the artist designated above.

Section 11. **Other Artists.** Section 12 of the Agreement is amended to clarify that City may freely allow other artists, performers, etc. selected by City to perform on the Stage before and after the Performance.

Section 12. **Omission of Section 16.** Section 16 of the Agreement is hereby deleted in its entirety.

Section 13. **Omission of Section 17.** Section 17 of the Agreement is hereby deleted in its entirety. Further, City is a governmental entity that is covered by the provisions of the Governmental Immunity Act of Utah, Utah Code Ann. 63G-7-101 et seq. (the “*Immunity Act*”). By entering into the Agreement, City does not waive any rights or protections to it under the Immunity Act.

Section 14. **Amendment to Section 19.** The phrase “and such person hereby personally assumes liability for the payment of said price in full” is hereby deleted from Section 19 of the Agreement.

By their signatures, below, Producer and City hereby enter into the Agreement, as modified above, effective the date first-above written.

**CITY:**

**COTTONWOOD HEIGHTS**, a Utah municipality

**ATTEST:**

By: \_\_\_\_\_  
**Kory Solorio**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr**, Mayor

**PRODUCER:**

**BIG DOOR ENTERTAINMENT**

By \_\_\_\_\_  
**Jake Collett**



210 North 1200 East, Suite 200 | Lehi , UT 84043, Ph. 801-855-6625  
 Agent@BigDoorEntertainment.com

**Artist Name : Foreign Figures**

THIS CONTRACT made on Thursday, 11 day of June Year 2015 between **Foreign Figures** (herein referred as Producer) and **City of Cottonwood Heights** (herein referred as Purchaser). Both parties are aware that Big Door Ent is acting as the agent between both parties.

<b>Show Date :</b> 07/24/2015	<b>Number Of Shows :</b>
<b>Venue :</b> Cottonwood Park	<b>Performance Time :</b>
<b>Venue Address :</b> 7500 S 2700 E Cottonwood Heights, Utah 84121	<b>Show Length :</b>
<b>Venue Contact :</b>	<b>Time of Doors :</b>
<b>Venue Phone :</b>	<b>Billing :</b>
<b>Venue Fax :</b>	<b>Position :</b>
<b>Venue Email :</b>	<b>Type of Engagement :</b>
<b>Venue Website :</b>	<b>Building Capacity :</b> <span style="float: right;"><b>Outdoor :</b> Yes</span>
<b>Production Contact :</b>	<b>Covered :</b> Yes
<b>Production Phone :</b>	<b>Radius Clause :</b>
<b>Show Lineup :</b>	<b>Age Limit :</b>
<b>Curfew :</b>	<b>Soft Merch : Artist % :100</b> <span style="float: right;"><b>House % :0</b></span>
<b>Hotels :</b>	<b>Music Merch : Artist % :100</b> <span style="float: right;"><b>House % :0</b></span>
	<b>Who Sells :</b>
	<b>Total tax :</b> \$0.00

Ticket Scaling				Terms		
TICKETS	COMPS	PRICE	EXTENDED	Guarantee \$:		
Gross tix	0		\$0.00	Deposit 1 :	\$550	Deposit 1 Due : 06/25/2015
Net Tix	0			Amount Due Date of Show :	\$550.00	
Average tix	\$0.00			Terms :		

Deposits are to be made payable to : Big Door Ent by Cashier's/Certified Check or Money Order.  
**BALANCE is due UPON DEMAND day of show in Cash or Cashier's Check and made payable to PRODUCER. This balance is guaranteed Rain or Shine. NO PERSONAL CHECKS WILL BE ACCEPTED.**

**Additional Provisions on Contract :** Please provide two cases of water and make it dinner for 6 night of show!

This engagement is not to be advertised or publicized in any manner or form until this contract is fully processed and signed by both parties or without written approval from Artist Management or Big Door Ent. This contract may become void if Purchaser fails to sign and return same within fourteen(14) days of date issued.

We acknowledge and confirm that we have read and approved the terms and conditions set forth in this contract. Riders attached hereto are hereby made a part hereof.

**Purchaser :** City of Cottonwood Heights  
**Signatory :**  
  
**Signature :** \_\_\_\_\_  
**Address :** Cottonwood Heights, Utah  
  
**Phone :** 801-550-8225  
**Email :** Aeatchel@ch.utah.gov

**Producer :**  
**Signatory :**  
  
**Signature :** \_\_\_\_\_  
**Address :** c/o Big Door Ent  
Lehi, UT 84043  
**Phone :** Ph. 801-855-6625  
**Email :**  
**Agent :** Molly



**BIG DOOR**

210 North 1200 East, Suite 200  
Lehi, UT 84043, Ph. 801-855-6625  
Agent@BigDoorEntertainment.com

### **Additional Terms and Conditions**

- 1.** PURCHASER will first apply any and all receipts received from the performance to payment required hereunder. All payments must be in full without any deductions whatsoever. PURCHASER will advise PRODUCER or PRODUCER's agent immediately upon request of the admissions prices for the performance.
- 2.** If the payment to the PRODUCER is based in whole or in part on receipts of the performance(s) hereunder, PURCHASER agrees to deliver to PRODUCER a certified statement of the gross receipts of each performance within (2) hours of such performance. If the payment of PRODUCER's share of performance receipts is based in whole or in part on expenses related to the engagement, PURCHASER shall verify with paid receipts, cancelled checks or other documentation of all expenses or they will not be included as expenses of the engagement. PRODUCER shall have the right to have representation present in the box office at all times. Such representative shall have access to the box office records of PURCHASER relating to gross receipts of this engagement only.
- 3.** PURCHASER will furnish and pay for all its own expense(s) necessary for the proper presentation of the performance on the date and time of the above-mentioned performance. This includes without limitation (a) suitable theater, hall or auditorium, well-heated, ventilated, lighted, clean, and in good order, curtains, properly tuned grand piano(s) and public address system in perfect working condition including microphone(s) in quantity and numbers required by PRODUCER, dressing rooms, all needed electricians and stage hands, all lighting, tickets, house programs, all licenses (including musical performing rights licenses), special police, ushers, ticket sellers, ticket takers, appropriate and sufficient advertising in the primary newspapers; (b) all music royalties connected with PRODUCER's use of music, and additionally the cost of any musicians (including Contractor) other than those furnished by PRODUCER as part of the PRODUCER's regular company; (c) all amusement taxes; (d) if PRODUCER requires, all needed facilities, electricians, stage hands and other personnel for lighting and dress rehearsals; and (e) all other items and personnel (including but not limited to any and all personnel, including musicians, as required by any national or local union(s) required for the proper presentation of the entertainment presentation hereunder and any rehearsals therefore, except those items and personnel which PRODUCER herein specifically agrees to furnish. PRODUCER has the right to rename the local music contractor and to approve the local musicians hired.
- 4.** In the event of sickness or of accident to PRODUCER, or if a performance is prevented, rendered impossible or infeasible by any act or regulation of any public authority or bureau, civil tumult, strike, epidemic, interruption in or delay of transportation services, war conditions or emergencies or any other similar or dissimilar cause beyond the control of PRODUCER, it is understood and agreed there shall be no claim for damages by PURCHASER and PRODUCER's obligations as to such performances shall be waived. In the event of non-performance for any of the above-stated reasons, if ARTISIT is ready, willing and able to perform, PURCHASER shall pay full compensation hereunder, otherwise, the monies (if any) advanced to PRODUCER hereunder, shall be returned on a pro-rata basis.
- 5.** Inclement weather rendering performances impossible, infeasible or unsafe shall not be deemed a force majeure event and payment of the agreed upon compensation shall be made notwithstanding. If PURCHASER and PRODUCER disagree as to whether rendition of the agreed upon compensation shall be made notwithstanding. If PURCHASER and PRODUCER disagree as to whether rendition of performance(s) is impossible, not feasible or unsafe because of inclement weather, PRODUCER's determination as to performance shall prevail.
- 6.** In the event PURCHASER refuses or neglects to provide any of the items or to perform any of its obligations herein stated, and/or fails to make any of the payments as provided herein, PRODUCER shall have the right to refuse to perform the contract, shall retain any amounts theretofore paid to PRODUCER by PURCHASER, and PURCHASER shall remain liable to PRODUCER for the agreed price herein set forth. In addition, if, on or before the date of any scheduled performance, PURCHASER has failed, neglected, or has been impaired or is in PRODUCER's opinion unsatisfactory, PRODUCER shall have the right to demand the payment of the guaranteed compensation forthwith. If PURCHASER fails or refuses to make such payment forthwith, PRODUCER shall have the right to cancel this engagement by notice to PURCHASER to that effect, and to retain any amounts theretofore paid to PRODUCER by PURCHASER and PURCHASER shall remain liable to PRODUCER for the agreed price herein and forth.
- 7.** The entertainment presentation to be furnished by PRODUCER hereunder shall receive billing in such order, form, size and prominence as directed by PRODUCER in all advertising and publicity issued by or under the control of the PURCHASER. PRODUCER's name or likeness may not be used as an endorsement or indication of use of any product or service nor in connection with any corporate sponsorship or tie-up, commercial tie-up or merchandising without PRODUCER's prior written consent.
- 8.** PURCHASER shall not itself, nor shall it permit others to record, broadcast or televise, photograph or otherwise reproduce the visual and/or audio performances hereunder, or any part thereof.
- 9.** PRODUCER shall have the exclusive right to sell souvenir programs, ballet books, photographs, records and any and all types of merchandise including, but not limited to, articles of clothing (i.e. T-shirts, hats, etc.), posters, stickers, etc. on the premises of the place(s) of performance without any participation in the proceeds by PURCHASER subject, however, to concessionaire's requirements, if any.
- 10.** Unless stipulated to the contrary in writing, PURCHASER agrees that PRODUCER may cancel the engagement hereunder without liability by giving the PURCHASER notice thereof at least thirty (30) days prior to the commencement date of the engagement hereunder. PRODUCER shall also have the right to terminate this agreement without liability in the event PURCHASER fails to sign and return this Contract within 10 days.
- 11.** PRODUCER shall have exclusive control over the production, presentation and performance of the engagement hereunder, including, but not limited to, the details, means and methods employed in fulfilling each obligation of PRODUCER hereunder in all respects. PRODUCER shall have the sole right, as PRODUCER may see fit, to designate and change at any time the performing personnel other than the PRODUCER(s) specifically named herein.
- 12.** PURCHASER agrees (a) to comply promptly with PRODUCER's directions as to stage settings for the performance hereunder, (b) that no performers other than those to be furnished by PRODUCER hereunder will appear on or in connection with the engagement hereunder, (c) that no stage seats are to be sold or used without PRODUCER's prior written consent, and (d) that the entertainment presentation will not be



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Agent@BigDoorEntertainment.com

## BIG DOOR

**13.** Unless stipulated to the contrary in this Agreement, Purchaser agrees that Producer may cancel the Engagement hereunder without liability by giving the Purchaser notice thereof at least thirty(30) days prior to the commencement date of the Engagement hereunder.

**14.** It is agreed that PRODUCER signs this contract as an independent contractor and not as an employee. This contract shall not, in any way be construed so as to create a partnership, or any kind of joint undertaking or venture between the parties hereto, nor make provisions hereof or otherwise.

**15.** Nothing in this Agreement shall require the commission of any act contrary to law or to any rules or regulations of any union, guild or similar body having jurisdiction over the services and personnel to be furnished by PRODUCER to PURCHASER hereunder. If there is any conflict between any provisions of this Agreement and any law, rule or regulation, such law, rule or regulation shall prevail and this Agreement shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict. PURCHASER agrees to comply with all regulations and requirements of any union(s) that may have jurisdiction over any of the said materials, facilities, and personnel to be furnished by PURCHASER.

**16.** In the event of any inconsistency between the provisions of this contract and the provisions of any riders, addenda, exhibits or any other attachments hereto, the parties agree that the provisions most favorable to PRODUCER and PRODUCER shall control.

**17.** PURCHASER hereby indemnifies and holds PRODUCER, as well as their respective agents, representatives, principals, employees, officers and directors, harmless from and against any loss, damage or expense, including reasonable attorney's fees, incurred or suffered by or threatened against PRODUCER or any of the foregoing in connection with or as a result of any claim for personal injury or property damage or otherwise brought by or on behalf of any third party person, firm or corporation as a result of or in connection with the engagement, which claim does not result from the active negligence of the PRODUCER.

**18.** Big Door Ent acts herein only as agent for PRODUCER and is not responsible for any act of commission or omission on the part of PRODUCER or PURCHASER. In furtherance thereof and for the benefit of Big Door Ent, it is agreed that neither PURCHASER nor PRODUCER will name or join Big Door Ent as a party in any civil action or suit arising out of, in connection with, or related to any act(s) of commission or omission of PURCHASER or PRODUCER.

**19.** This contract (a) cannot be assigned or transferred without the written consent of PRODUCER, (b) contains the sole and complete understanding of the parties hereto and (c) may not be amended, supplemented, varied or discharged, except by an instrument in writing signed by both parties. The validity, construction and effect of this contract shall be governed by the laws of the State of Utah, regardless of the place of performance. THE PERSON EXECUTING THIS AGREEMENT ON PURCHASER'S BEHALF WARRANTS HIS/HER AUTHORITY TO DO SO, AND SUCH PERSON HEREBY PERSONALLY ASSUMES LIABILITY FOR THE PAYMENT OF SAID PRICE IN FULL. The terms "PRODUCER" and "PURCHASER" as used herein shall include and apply to the singular, the plural and to all genders.

### **20. Force Majeure**

a. A "Force Majeure Event" is defined as one or more of the following causes which renders performance impossible, impracticable, or unsafe: death, illness or injury to Producer or member of Producer's immediate family, any of Producer's musicians, or any of PRODUCER's key personnel; theft, loss, destruction, or breakdown of instruments or equipment owned or leased by PRODUCER; fire; threat(s) or act(s) of terrorism; riot(s) or other form(s) of civil disorder in, around, or near the Performance(s) venue; strike, lockout or other forms of labor difficulties; any act, order, or relation of any court, government agency or public authority; act of God; absence of power or other essential services; failure of technical facilities; failure or delay of transportation not within PRODUCER's reasonable control; inclement weather; and/or any similar or dissimilar cause beyond PRODUCER's or PURCHASER's reasonable control.

b. If a Force Majeure Event occurs, the parties' respective obligations hereunder will be excused fully, without any additional obligation, subject to the provisions of Section 20(c) below, and each of the parties shall bear its own costs incurred in connection with this Agreement.

c. Notwithstanding the foregoing, if Producer is ready and willing to perform, PURCHASER will pay PRODUCER the full amount of the guarantee set forth in this Agreement.

Under no circumstances will Producer be liable to Purchaser or any third party in contract, tort, or otherwise, for any indirect, incidental, special, consequential, punitive, exemplary, or similar damages that result from the parties' performance or non performance hereunder, including but not limited to loss of revenue or lost profits, even if Producer has been advised of the possibility of such damages.

# EXPENSE SHEET

## Foreign Figures - 07/24/2015 - Cottonwood Heights

Artist : <b>Foreign Figures</b>	Show Time :
Date : <b>07/24/2015</b>	Agent : <b>Molly</b>
Venue : <b>Cottonwood Park 7500 S 2700 E Cottonwood Heights, Utah 84121</b>	Venue Phone : Venue Fax :

### FIXED EXPENSES

Advertising	\$0.00	Insurance	\$0.00	Sound/Lights	\$0.00
Ascap/Bmi/Sesac	\$0.00	Loaders	\$0.00	Spot Rental	\$0.00
Barricades	\$0.00	Medical/Emt.	\$0.00	Stage Rental	\$0.00
Box Office	\$0.00	Misc	\$0.00	Supervisors	\$0.00
Car Rental	\$0.00	Misc 1	\$0.00	Stagehands	\$0.00
Catering	\$0.00	Misc 2	\$0.00	Support/Talent	\$0.00
Clean Up	\$0.00	Misc 3	\$0.00	Support1	\$0.00
Credit Cards	\$0.00	Phone/Internet	\$0.00	Support2	\$0.00
Door Guards	\$0.00	Police	\$0.00	Support3	\$0.00
Electrician Equip. Rent	\$0.00	Production	\$0.00	Tix Commision Cap	\$0.00
Fireman	\$0.00	Prod./Stage Mgr	\$0.00	Tix Print	\$0.00
Forklift	\$0.00	Remote	\$0.00	Ticket Rebate	\$0.00
Furniture Rent	\$0.00	Rent	\$0.00	Tix Takers	\$0.00
Hall Rent Cap	\$0.00	Riggers	\$0.00	Towels	\$0.00
House Fixed Exp.	\$0.00	Runners	\$0.00	Transportation	\$0.00
House Manager	\$0.00	Sec. Private	\$0.00	Ushers	\$0.00
House Staff	\$0.00	Sec. T Shirt	\$0.00		
<b>Totals</b>					<b>\$0.00</b>

### VARIABLE EXPENSES

	Flat	Percentage	Per Ticket			Total
Facility Fee	\$0.00	0.00	\$0.00			\$0.00
Parking Fee	\$0.00	0.00	\$0.00			\$0.00
Misc 1	\$0.00	0.00	\$0.00			\$0.00
Misc 2	\$0.00	0.00	\$0.00			\$0.00
Total Pre Tax						\$0.00
Net Pre Tax						\$0.00
Sales Tax	\$0.00	0.00	\$0.00			\$0.00
Promoter Costs	\$0.00	0.00		Promoter Guarantee as cost		\$0.00
Rent	\$0.00	0.00	\$0.00	Rent Capped At	\$0.00	\$0.00
Insurance	\$0.00	0.00	\$0.00			\$0.00
Box Office	\$0.00	0.00	\$0.00			\$0.00
ASCAP	\$0.00	0.00	\$0.00			\$0.00
BMI	\$0.00	0.00	\$0.00			\$0.00
SESAC	\$0.00	0.00	\$0.00			\$0.00
Misc1	\$0.00	0.00	\$0.00			\$0.00
Misc2	\$0.00	0.00	\$0.00			\$0.00
Misc3	\$0.00	0.00	\$0.00			\$0.00
<b>Totals</b>	<b>\$0.00</b>	<b>0.00</b>	<b>\$0.00</b>			<b>\$0.00</b>

SHOW REPORT	AMOUNT
Net After Tax	

SUMMARY	AMOUNT
AVG. Ticket Price	\$0.00
Total Tickets	0
Gross Ticket	\$0.00