

2023 FALL FUN FEST EVENT LICENSE AGREEMENT

THIS EVENT LICENSE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2023 (“Effective Date”), by and between the CITY OF PORT ST. LUCIE, a Florida municipal corporation, by and through the Parks & Recreation Department, (“CITY”) and THE PORT ST. LUCIE DOWNTOWN LIONS FOUNDATION, INC., a Florida not-for-profit corporation, whose mailing address is 1967 S.E. Port St. Lucie Blvd, P.O. Box 9301, Port St. Lucie, Florida 34952 (“FOUNDATION”). In consideration of the mutual covenants contained herein, the parties agree as follows:

WHEREAS, the FOUNDATION and the CITY have historically worked together to co-produce and plan the annual “Fall Fun Fest” event to celebrate the fall season (the “Event”); and

WHEREAS, the Event shall be held on:

Friday, October 27, 2023 from 5:00 pm to 10:00 pm;

Saturday, October 28, 2023 from 12:00 pm to 10:00 pm; and

Sunday, October 29, 2023 from 1:00 pm to 6:00 pm;

subject to inclement weather, and following all CDC guidelines, at the MIDFLORIDA Event Center, 9221 S.E. Event Center Place, Port St. Lucie, Florida 34952 (“Event Premises”); and

WHEREAS, the FOUNDATION wishes to participate in the Event; and

WHEREAS, the CITY and the FOUNDATION have agreed to share net profits from the Event 50/50, excluding alcohol sales, after application of expenses, following an accounting of expenses and revenues as provided herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RECITALS

The foregoing recitals are hereby incorporated as forming the intent and purpose of this Agreement.

2. SPONSORSHIP AND MARKETING

Both the FOUNDATION and the CITY shall be responsible for obtaining Event sponsors. Any funds received from said sponsorships shall be used to offset the total

costs of the Event before the final accounting of costs and revenues are made at the conclusion of the Event. The City shall be responsible for marketing the Event.

3. EVENT EXPENSES

After the revenues obtained from sponsorships and Event proceeds, as specified in Paragraphs 2 and 4, are applied to Event costs and expenses, the CITY and the FOUNDATION shall be jointly and equally responsible for all remaining Event costs and expenses necessary to produce the Event, with the exception of costs related to the FOUNDATION's acquisition of alcohol as specified in paragraph 6 herein. The Foundation shall be exclusively responsible for all alcohol costs related to the Event.

4. EVENT PROCEEDS

The CITY and the FOUNDATION shall be entitled to a 50/50 split of net revenue and proceeds from the sale of craft items from craft vendors, food and non-alcoholic beverage items, and carnival tickets. The Foundation shall be entitled to all revenue and proceeds from the sale of alcohol as provided in Paragraph 6.

5. ACCOUNTING

The CITY shall be responsible for the accounting of all event revenue and expenses at the conclusion of the Event. If Event revenues exceed the amount of Event expenses, the City shall remit the FOUNDATION's portion of revenues to the FOUNDATION as set forth herein. If Event expenses exceed revenues, the CITY shall invoice the FOUNDATION for fifty (50) percent of the event revenues (over and above the FOUNDATION's cost for alcohol) as set forth herein.

6. ALCOHOL

The FOUNDATION will be responsible for all alcoholic beverage sales, training of staff, and service during the Event. The FOUNDATION will obtain the necessary and proper license from the Division of Alcoholic Beverages and Tobacco to sell alcoholic beverages and shall retain all records and receipts related thereto. The FOUNDATION shall be responsible for all costs associated with the sales, training, and service of alcoholic beverages during the Event and shall retain all net profits from the sale of alcoholic beverages during the Event. The FOUNDATION shall comply with any reporting requirements of the liquor license issued by the Division of Alcoholic Beverages and Tobacco for the Florida Department of Professional & Business Regulation and any

additional reporting requirements required by local, state, and federal law. The CITY shall not be liable, and FOUNDATION agrees to indemnify and hold harmless CITY, against any liability or any injury of any kind whatsoever related directly or indirectly to FOUNDATION's obligations as stated herein.

7. INDEMNIFICATION / HOLD HARMLESS

The FOUNDATION agrees to indemnify, defend and hold harmless, the CITY, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the FOUNDATION, agents, laborers, vendors, or other personnel and/or entity acting under the FOUNDATION's control in connection with the terms of this Agreement and, to that extent, the FOUNDATION shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the CITY in defense of such claims and losses including appeals. The CITY shall not be liable for damage claims from injury to persons or property from any cause relating to the occupancy, construction, improvement, maintenance, or operation of the Event Premises by the FOUNDATION during the term of this Agreement or any extension thereof. The aforesaid hold-harmless Agreement by the FOUNDATION shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the actions of the FOUNDATION or any agent laborers, or any employee or volunteer of the FOUNDATION, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The FOUNDATION shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by the FOUNDATION during the performance of this Agreement. The FOUNDATION shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on this Agreement. The

FOUNDATION shall secure all permits, fees, licenses, and inspections necessary for the execution of this Agreement.

No provision of this Agreement shall be construed to create a partnership or joint venture of any type between the CITY and the FOUNDATION, or in any way make either responsible for any debts, losses or liabilities of the other, without limitation. This agreement shall not be assigned, subcontracted or transferred to any other entity without the express written approval of the CITY.

8. SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the CITY's sovereign immunity protections existing under the laws of the State of Florida or extending or increasing the limits of liability as set forth in Section 768.28 of Florida Statutes.

9. EQUIPMENT

The CITY shall furnish tables, chairs and a tent for use by the FOUNDATION during the Event. Upon request, the CITY agrees to furnish power to the FOUNDATION in the form of a generator, fuel and/or electrical cords.

10. INSURANCE

The FOUNDATION shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as CITY's review or acceptance of insurance maintained by the FOUNDATION are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the FOUNDATION under this Agreement. The parties agree and recognize that it is not the intent of the CITY that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement, will provide insurance coverage to any entity, corporation, business, person, or organization, other than the CITY, and the CITY shall not be obligated to provide any insurance coverage other than for the CITY or extend its sovereign immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void

and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this Agreement, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

A. Workers' Compensation Insurance & Employer's Liability: The FOUNDATION shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis. If the FOUNDATION claims exemption under Florida Workers' Compensation insurance, the FOUNDATION must present a waiver of exemption from the Florida Division of Financial Services indicating such.

B. Commercial General Liability Insurance: The FOUNDATION shall agree to maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

C. Additional Insured: An Additional Insured endorsement must be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary & non-contributory. A per event aggregate limit endorsement should be attached. Defense costs are to be in addition to the Limit of liability. A waiver of subrogation shall be provided in favor of the CITY. Coverage shall extend to independent contractors, fellow employees, and volunteers.

Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

- D. Liquor Liability Insurance: The FOUNDATION agrees to maintain Liquor Liability insurance issued under an Occurrence form basis, in limits not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. A waiver of subrogation shall be provided in favor of the CITY.
- E. Automobile Liability Insurance: The FOUNDATION agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing the Foundation to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis and non-contributory basis.
- F. Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Agreement have been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability, Auto Liability, and Liquor Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents, and shall include 2023 Fall Fun Fest Event Agreement.**" The Policies shall be specifically endorsed to provide thirty (30) days written notice to the CITY prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.

G. Waiver of Subrogation: The FOUNDATION shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Agreement to waive subrogation without an endorsement, then FOUNDATION shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should FOUNDATION enter into such an Agreement on a pre-loss basis.

H. Deductibles: All deductible amounts shall be paid for and be the responsibility of the FOUNDATION for any and all claims under this Agreement.

It shall be the responsibility of the FOUNDATION to ensure that all independent contractors and subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of the FOUNDATION to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured without the language when required by written contract. If FOUNDATION, independent contractor or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by FOUNDATION/independent contractor/subcontractor.

The FOUNDATION may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation, to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

When a self-insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement. A failure on the part of the FOUNDATION to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause to terminate this Agreement.

11. ENTERTAINMENT

The FOUNDATION shall be responsible for obtaining the entertainment for the Event.

12. FORCE MAJEURE

In the case that a state of emergency may be declared, or the Event Premises or any part thereof shall be destroyed or damaged by hurricane, fire, water, or any other cause, or as the result of any other casualty or unforeseen occurrence, the CITY may determine that fulfillment of the Agreement is not possible. If any of these shall occur, this Agreement shall be subject to termination. Should it become necessary in the judgment of the CITY to evacuate the Event Premises because of a bomb threat or for other reasons of public safety, the dates and times provided in this Agreement will be extended for sufficient time to complete the Event without additional terms and conditions providing such time does not interfere with rights previously granted to another event. The parties also agree that if unforeseen circumstances due to weather materially affect attendance, the parties may renegotiate the payment of costs and expenses set forth herein, except that any expenses and proceeds related to the sale of alcohol shall remain as set forth herein.

13. VENUE

The parties consent solely to a state court of jurisdiction in St. Lucie County, Florida, for any litigation which may arise out of this Agreement among the parties.

14. ENTIRE AGREEMENT

It is agreed that this document contains the entire Agreement between the parties regarding the 2023 Fall Fun Fest event, and this Agreement shall not be modified in any respect except in writing signed by both parties. Any and all disputes pertaining to this Agreement shall be referred for resolution to the City Manager for the City of Port St. Lucie, Florida.

IN WITNESS WHEREOF, the parties hereto have set their respective hands this
___ day of _____, 2023

CITY OF PORT ST. LUCIE

By: _____
Sherman Conrad
Director, Parks & Recreation

THE PORT ST. LUCIE DOWNTOWN LIONS
FOUNDATION, INC.

By: _____
Michael Habyan President

Approved as to Form and Sufficiency:

Spencer Scott, Esq.
City Attorney's Office