

Prepared by and return to:
City of Port St. Lucie
City Attorney's Office
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984

2023 FESTIVAL OF LIGHTS
EVENT LICENSE AGREEMENT

THIS EVENT LICENSE AGREEMENT ("Agreement") is made and entered into as of the date entered below 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, 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, Festival of Lights is a festival which includes holiday events and has approximately 10,000 attendees. The CITY, through its Parks & Recreation Department, produces Festival of Lights ("Event") each year to celebrate the holiday season;

WHEREAS, the 2023 Event will be held on Saturday, December 2, 2023 from 2:00 p.m.-10:00 p.m., subject to inclement weather, on the premises of the MIDFLORIDA Credit Union Event Center, 9221 S.E. Event Center Place, Port St. Lucie, Florida 34952 ("Event Premises");

WHEREAS, the FOUNDATION has agreed to provide and sell alcohol to attendees during the hours of the Event on the Event Premises; 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. **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 Florida 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.

3. INDEMNIFICATION/HOLD HARMLESS. 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 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 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.

4. 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.

5. 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.

6. 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 Contract, 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 FOUNDATION under the Contract.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its 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 project, 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, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by FOUNDATION qualify its employee for benefits under Federal Workers' Compensation

Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

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	\$5,000,000
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 and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent FOUNDATIONS and fellow employees. 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. Dram Shop Liability (Liquor) Coverage: The FOUNDATION shall procure and agree to maintain and prior to commencement of this Contract, provide the City with evidence to cover Dram Shop Liability for the serving and selling of intoxicating beverages with limits of \$1,000,000 per occurrence. City shall be listed as an Additional Insured. Waiver of Subrogation is NOT required for this contract.

E. Except as to Workers' Compensation and Employers' Liability insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has 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 for Commercial General Liability, Business Auto Liability, and Dram Shop 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 the contract name and number shall be listed as additional insured.**" Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The

policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the FOUNDATION shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

F. Automobile Liability Insurance: The FOUNDATION shall agree 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 FOUNDATION does not own any automobiles; the Business Auto Liability requirement shall be amended allowing 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 must be provided. Coverage shall apply on a primary and non-contributory basis.

G. Waiver of Subrogation: The FOUNDATION shall agree by entering into this Contract 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 Contract 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.

H. Deductibles: All deductible amounts shall be paid for and be the responsibility of the FOUNDATION for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

I. 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.

J. 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."

K. 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.

L. 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.

7. 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.

8. MISCELLANEOUS. No provision of this Agreement shall be construed to create a partnership or joint venture of any type between the CITY and 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.

9. 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.

10. ENTIRE AGREEMENT. It is agreed that this document contains the entire Agreement between the parties regarding the 2023 Festival of Lights 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 or its designee for the City of Port St. Lucie, Florida.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 Department

Approving Resolution/Meeting Detail:

**THE PORT ST. LUCIE DOWNTOWN LIONS
FOUNDATION, INC.**

By: _____

Authorized Representative/Title