

2022 FREEDOMFEST EVENT AGREEMENT

THIS EVENT AGREEMENT is made and entered into this ___ day of _____, 2022, 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.**, located at 1967 S.E. Port St. Lucie Blvd, P.O. Box 9301, Port St. Lucie, Florida 34952 (“FOUNDATION”).

RECITALS:

WHEREAS, Freedomfest is a festival which includes fireworks, food, music, craft vendors, and other entertainment which draws an estimated 30,000 attendees. The CITY, through its Parks & Recreation Department, produces Freedomfest (“the Event”) each year to celebrate the 4th of July and the history, government, and traditions of the United States; and

WHEREAS, the CITY would like to continue its sponsorship of the annual Freedomfest Event for 2022 by providing the venue; and

WHEREAS, the 2022 Event will be held on July 4, 2022 from 4:00 p.m.-10:00 p.m., subject to inclement weather, on the CITY owned premises of the MIDFLORIDA Event Center, located at 9221 SE Event Center Place, Port St. Lucie, FL 34952 (“Event Premises”);and

WHEREAS, the FOUNDATION has agreed to sell alcohol 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. EVENT PREMISES

The CITY grants the FOUNDATION a revocable non-exclusive license to utilize the Village Square outdoor area adjacent to the MIDFLORIDA Event Center, for the

purpose of co-producing the Event (the “Event Premises”). Said Event Premises includes the area more particularly described and/or reflected in Exhibit “A” attached hereto.

2. USE OF PREMISES

The Event Premises are to be used by the FOUNDATION for the furtherance of the community and civic goals of the CITY, including, but not limited to, conducting the Event. The FOUNDATION shall restrict its use to such purposes and shall not permit other uses of the Event Premises without the written consent of the CITY.

3. 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 including 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 resulting from FOUNDATION’s failure to comply with the requirements stated herein and from all claims, actions, liabilities, losses and expenses related directly or indirectly to FOUNDATION’s obligations as stated herein.

4. INDEMNIFICATION/HOLD HARMLESS

The CITY shall not be liable for any damage claim(s) from injury to person(s) 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 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.

Nothing contained in this License 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.

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.

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 Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as the 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 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. 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 shall agree 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. The CITY should be listed as an additional insured.

E. 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 that the FOUNDATION 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.

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 2022 Freedomfest 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 vendors, independent contractors, and/or subcontractors utilized in this Agreement comply with the same insurance requirements referenced above. The CITY, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein. All insurance carriers must have an AM Best rating of at least A:VII or better. A failure on the part of the FOUNDATION to execute the Agreement and/or punctually deliver the required insurance within 14 days of the Event, may be cause for annulment of this Agreement.

7. ENTIRE AGREEMENT

It is agreed that this document contains the entire Agreement between the parties regarding the 2022 Freedomfest 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.

IN WITNESS WHEREOF, the parties hereto have set their respective hands this ____ day
of _____, 2022.

FOUNDATION

By: _____
Joe Eric, President
The Port St. Lucie Downtown
Lions Foundation, Inc.

CITY OF PORT ST. LUCIE
a Florida municipal corporation

By: _____
Sherman Conrad
Director, Parks & Recreation

Approved as to Form and Legal Sufficiency:

Camille A. Wallace, Esquire
Deputy City Attorney

EXHIBIT A
Event Premises Map

