

2024 FREEDOMFEST EVENT AGREEMENT

THIS EVENT AGREEMENT is made and entered into this ___ day of _____, 2024, 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 20,000 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 2024 by providing the venue; and

WHEREAS, the 2024 Event will be held on July 4, 2024 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 procure and maintain and prior to commencement of this Contract, provide the City with evidence to cover Liquor 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. 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 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 2024 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. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Parks and Recreation Department. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor 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.

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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 preloss 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 Contractor 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 vendors, independent contractors, and/or subcontractors utilized in this Agreement comply with the same insurance requirements referenced above. It will be the responsibility of the FOUNDATION to obtain Certificates of Insurance from all independent contractors and sub-contractors listing the City as an Additional Insured without the language when required by written contract. If FOUNDATION, independent contractor or sub-contractor 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, or sub-contractor.

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 the agreement.

7. MISCELLANEOUS PROVISIONS

A. FOUNDATION shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and binding codes and shall, at his own expense, secure and pay the fees and charges for all permits which it is required for the performance of the Agreement. All services provided are to comply with all applicable federal, state, and local laws and regulations.

B. FOUNDATION shall not delegate, assign, or subcontract any part of the work under the Agreement or assign any monies due it hereunder without first obtaining the written consent of the City. Notwithstanding the foregoing, if an entity purchases all or substantially all of FOUNDATION's assets, FOUNDATION merges, or FOUNDATION's parent company merges, with another entity, then it shall immediately notify the City of such action, or if protected by confidentiality obligations, as soon as permitted. If the City objects to such purchase, sale, or merger so notified, the City has the right to cancel this Agreement within thirty (30) days after such notice, without penalty.

C. The City may, at any time, with or without cause, or for its convenience, terminate all or a portion of the Agreement upon fifteen (15) days written notice to FOUNDATION. Any such termination shall be accomplished by delivery in writing of a notice to Empathy. Following termination without cause, FOUNDATION shall be entitled to compensation upon submission of invoices and proper proof of claim, for services provided under the Contract to the City up to the time of termination, pursuant to Florida law.pro rate any funds paid by the City that are unused.

D. The Agreement is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken to enforce the Agreement, arising out of the Agreement, or related to the Agreement, shall be in St. Lucie County, Florida. The parties to the Agreement hereby freely, voluntarily, and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

E. If any provision of the Agreement is judicially or administratively held invalid the remainder of the Agreement will remain binding upon the parties, unless the inoperative provision would cause enforcement of the remainder of the Agreement to be inequitable under the circumstances.

F. Any deadline provided for in the Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes, and Acts of God. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-

performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

8. ENTIRE AGREEMENT

It is agreed that this document contains the entire Agreement between the parties regarding the 2024 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 _____, 2024.

FOUNDATION

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

CITY OF PORT ST. LUCIE
a Florida municipal corporation

By: _____
Sherman Conrad
Director, Parks & Recreation

EXHIBIT A
Event Premises Map

