

2019 FALL FUN FEST CO-PRODUCED EVENT LICENSE AGREEMENT

THIS EVENT LICENSE AGREEMENT is made and entered into this ____ day of _____, 2019, 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., 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 which draws an anticipated attendance of 10,000 visitors; and

WHEREAS, the 2019 Fall Fun Fest event will be held on October 25th from 5:00-10:00 p.m., October 26th from 12:00 noon-10:00 p.m., and October 27th from 1:00-6:00 p.m. (the "Event"); and

WHEREAS, the City would like to continue its sponsorship of the annual Fall Fun Fest Event for 2019 through staff support, expense sharing, sponsorship assistance and marketing efforts and by providing the venue and equipment; 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

WHEREAS, the City owns the Port St. Lucie Civic Center, 9221 S.E. Civic Center Place, Port St. Lucie, Florida 34952.

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 Port St. Lucie Civic 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. TERM

The term of this License Agreement is for a period beginning on October 25, 2019 at 5:00 p.m. and ending on October 27, 2019 at 6:00 p.m.

3. 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.

4. 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.

5. SECURITY

The Foundation shall be responsible for obtaining the necessary security for the Event, through the Port St. Lucie Police Department.

6. EVENT EXPENSES

After the revenues obtained from sponsorships and Event proceeds, as specified in Paragraphs 4 and 7, 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 8 herein. The Foundation shall be exclusively responsible for all alcohol costs related to the Event.

7. 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 8.

8. ALCOHOL

The Foundation will be responsible for all alcoholic beverage sales 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 and service of alcoholic beverages during the Event and shall retain all net profits from the sale of alcoholic beverages during the Event.

9. LIABILITY

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 License 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, volunteers 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 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 License 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. Nothing in this Agreement shall be deemed to extend or waive the City's sovereign immunity pursuant to Section 768.28, Florida Statutes.

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 of Port St. Lucie 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 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 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.

1. 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.

2. 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

3. 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.
4. 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.

5. 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 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.
6. 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 2019 Fall Fun Fest Event License 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.
7. 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.

8. **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.

11. EQUIPMENT

The City shall furnish tables, chairs, tents, and generators for use by the Foundation during the Event. The City will also obtain the carnival vendor for the Event.

12. 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.

13. ENTERTAINMENT

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

14. 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 Event 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.

15. ENTIRE AGREEMENT

It is agreed that this document contains the entire Agreement between the parties regarding the 2019 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.

16. 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.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have set their respective hands
this ____ day of _____, 2019.

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

By: _____
Sherman Conrad
Director, Parks & Recreation

FOUNDATION,

By: _____
Gary Davis, President
THE PORT ST. LUCIE DOWNTOWN
LIONS FOUNDATION, INC.

Approved as to Form and Sufficiency:

Lee J. Baggett, Esquire
Title: Deputy City Attorney