

**EVENT AGREEMENT BETWEEN KIWANIS CLUB OF NORTH PORT, INC.
AND THE CITY OF NORTH PORT, FLORIDA**

THIS EVENT AGREEMENT (“Agreement”) is made and entered into by and between the Kiwanis Club of North Port Inc., a Florida Not For Profit Corporation (“Kiwanis”), and the City of North Port, Florida, a municipal corporation of the State of Florida (the “City”), (together “the parties”).

WHEREAS, Kiwanis is a not for profit service organization operating as part of Kiwanis International, whose mission is dedicated to improving the lives of children one community at a time; and

WHEREAS, Kiwanis serves City residents via programming and fundraising aimed at combatting community challenges, including poverty; and

WHEREAS, Kiwanis is tax exempt under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Parties desire to hold a marriage vow renewal event at the City’s Garden of the Five Senses pursuant to the funding distribution arrangement provided by this Agreement; and

WHEREAS, the City Commission for the City of North Port, Florida finds that the services provided under this Agreement primarily serve a public purpose by promoting community involvement in the City’s parks and natural resources; and

WHEREAS, the City Commission for the City of North Port, Florida finds that the services provided under this Agreement promote the health, welfare, safety, and protection of the community and the City’s Parks & Recreation services, and that these services are a proper exercise of a municipal function.

NOW, THEREFORE, for and in consideration of the mutual covenants specified herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and by this reference, are incorporated in this Agreement.
2. Term and Termination.
 - A. Term. The term of this Agreement beings on the date it is approved by the City Commission (“Effective Date”) and will remain in effect for a term of one year (“Initial Term”).
 - B. Renewal. At the end of the Initial Term, and unless otherwise terminated as provided herein, this Agreement will automatically renew with future Event dates as agreed to by the parties (“Renewal Term”). This Agreement shall not have more than three Renewal Terms.

- C. Termination. This Agreement may be terminated, without cause, by either party upon providing the other party with 30 days' prior written notice of termination.
- D. Non Appropriation. The Parties acknowledge and agree that the obligations of the City to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which the City is a party, are subject to the provisions of Florida Statutes Section 166.241, as amended, regardless of whether a particular obligation has been expressly so conditioned. Since funds are appropriated annually by the City Commission on a fiscal year basis, the City's legal liability for the payment of any costs will not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor will such liability arise if a request for such appropriations is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no officer, employee, director, member, or other natural person or agent of the City will have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the City under this Section. This Agreement does not constitute an indebtedness of the City nor an obligation for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

3. Use of the Garden of the Five Senses.

- A. The parties will hold a marriage vow renewal event at the Garden of the Five Senses, located at 4299 Pan American Blvd (the "Property"), on February 12, 2023 (the "Event") or another date mutually agreed to by the parties ("alternate date(s)"). The Parties agree to identify rain dates for rescheduling the Event in case of inclement weather. The Event will include one marriage vow renewal ceremony, lasting no longer than one hour. The City Manager or designee may agree to alternate dates and rain dates with Kiwanis.
- B. The City will ensure that the Property is properly set-up for the Event, and that the Event is properly broken-down when complete. The Parties are both responsible for the proper disposal of all waste generated during the Event. The area used during the Event must be kept neat and orderly at all times and, upon the conclusion of the Event, left in the same or better condition as it was provided. Kiwanis is responsible for paying for any necessary cleaning or remediation that the City determines to be specialty cleaning or beyond what is normal.
- C. The City will close the Property to the general public: (i) up to two hours before the Event; (ii) up to four hours during the Event; and (iii) for up to two hours after the Event. Additionally, the City will allow Event participants to use the open field directly across from the Property on Pan American Boulevard as an overflow parking area during these times.
- D. Kiwanis is responsible for ensuring that all items provided by the City are returned to the City in the same condition as when Kiwanis received them. Kiwanis is responsible for any damage caused to these items while in its possession.

- E. THE PROPERTY AND ALL CITY-OWNED ITEMS ARE PROVIDED IN “AS IS” CONDITION. THE CITY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, AS TO THE CONDITION OF THE PROPERTY AND PREMISES OR THE USE AND OCCUPANCY AUTHORIZED OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.
- F. The City reserves the right to expel any person from City-owned property who is causing a disturbance, is conducting themselves in violation of any laws, City rules or regulations, or whose conduct or activity presents a safety risk or public nuisance. Neither the City nor any of its officers, agents, or employees will be liable to Kiwanis for any damages that may be sustained to the person or property of Kiwanis or its employees or volunteers through the City’s exercise of this right.

4. Responsibilities.

- A. Special Event Permit. The City will submit a Special Event Permit application for the Event that includes safety and traffic control requirements. Kiwanis must provide the City with all required vendor forms and insurance certifications no less than 15 days prior to the Event.
- B. Marketing. The City will develop and disseminate marketing for the Event, including but not limited to an announcement on the City’s website, a Facebook event, fliers, posters, and a press release.
- C. Event staff and resources. On the day of the Event, the Parties will each provide a mutually agreed upon number of staff, volunteers, and resources necessary to conduct the Event, based on available resources and funding. Either party’s inability to provide the agreed upon number of staff, volunteers, or resources may cause the Event to be canceled or rescheduled. Kiwanis is responsible for providing a wedding vow officiant for each ceremony during the Event.
- D. Equipment. The Parties will ensure that the following equipment is provided for the Event as necessary and as determined by the availability of resources and funding.
 - 1. Tables and tablecloths;
 - 2. Chairs;
 - 3. Sound equipment units
 - 4. Hand sanitizer stations;
 - 5. Light towers;
 - 6. Trash and recycling receptacles; and
 - 7. Directional and parking signage.

E. Licenses and certifications. Kiwanis must have and maintain during the term of this Agreement and must ensure that any employee or volunteer at or under its direction or supervision has, the licensing, certification, experience, education, and/or training necessary to perform and provide the services, including but not limited to any ASCAP, BMI, or SESAC license required for the playing of copyrighted music. Kiwanis will not be permitted to perform any services until proof of any required license and/or certification is provided to the City. Kiwanis's failure to maintain a required license or certification will be deemed a material breach of this Agreement.

5. Fee Collection and Distribution.

A. Registration fee and collection. The City will collect all registrations and related fees for the Event. The City will charge Event participants a registration fee per couple that is calculated with the intent of covering all costs of the Event ("Event Revenue").

B. Expenses.

1. Expense tracking. If a party desires reimbursement of an Event expense, the party must record and track the incurred expense. Within 15 days following the Event, each party must provide the other party with a copy of all receipts and an itemized spreadsheet of expenses related to the Event.

2. Expense verification. The City will verify all expenses submitted by Kiwanis. Kiwanis must provide the City with any additional information requested to verify the expenses presented. The City may reject any expense incurred by Kiwanis that the City believes, in its sole discretion, is not related to the Event or is unreasonable.

3. Prohibited expenses. The Parties must ensure that their incurred expenses do not include sales tax and credit card processing fees, as the Parties will not be reimbursed for any sales tax or credit card processing fees paid in furtherance of the Event. The Parties will not be reimbursed for any expense related to the purchase of alcohol.

C. Summary of expenses and revenues. Once the Parties have exchanged their itemized expense spreadsheets and reimbursement requests, the City will complete an itemized expense and revenue spreadsheet showing the total reimbursable expenses incurred by the Parties for the Event, and the total revenues generated from registration fees.

D. Revenue distribution. The City is responsible for distributing Event Revenue in the following order, to the extent Event Revenue exists:

1. The City will reimburse itself for all verified expenses related to the Event.

2. The City will reimburse Kiwanis for all verified expenses related to the Event.

3. The City will retain fifty percent of all remaining Event revenue and will distribute fifty percent of all remaining Event revenue to Kiwanis.

6. Insurance.

- A. Before providing any services under this Agreement, Kiwanis must procure and maintain during the life of this Agreement, the insurance listed below unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without the City Manager or designee's prior written approval. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with Kiwanis.
 1. Workers' Compensation Insurance. Coverage to apply for all employees at the statutory limits provided by state and federal laws. Include proof of current Workers' Compensation Coverage or Workers' Compensation Exemption (notarized affidavit).
 2. Comprehensive Commercial General Liability Insurance. Aggregate must apply separately to this Agreement. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.
- B. Waiver of Subrogation. All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship between Kiwanis and the City. It is Kiwanis' responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, Kiwanis, its officers, officials, agents, employees, volunteers, and any sub-contractors, agree to waive all rights of subrogation against the City and its insurance carriers for any losses paid, sustained, or incurred, but not covered by insurance, that arise from the contractual relationship between the Parties. This waiver also applies to any deductibles or self-insured retentions for which Kiwanis or its agents may be responsible.
- C. Policy Form. All policies required by this Agreement, with the exception of Workers' Compensation, or unless Risk Management through the City's Purchasing Office gives specific approval, are to be written on an occurrence basis and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insureds as their interest may appear under this Agreement. Claims Made Policies will be accepted for such risks as are authorized by the City's Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, Kiwanis agrees to purchase the extended reporting period on cancellation or

termination unless a new policy is affected with a retroactive date, including at least the last policy year.

- D. Insurance requirements itemized in this Agreement, and required of Kiwanis, must be provided by or in behalf of all sub-contractors to cover their operations performed under this Agreement. Kiwanis is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-contractors.
- E. Each insurance policy required by this Agreement must:
 - 1. Apply separately to each insured against whom a claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - 2. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. Kiwanis is to notify the City's Purchasing Office by written notice via certified mail, return receipt requested.
- F. The City retains the right to review, at any time, coverage, form, and amount of insurance.
- G. **The procuring of required policies of insurance must not be construed to limit Kiwanis' liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of Kiwanis' liability for indemnity of the City shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between Kiwanis and its carrier.**
- H. Kiwanis is solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and is solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the City is an insured under the policy. Kiwanis' insurance is considered primary for any loss, regardless of any insurance maintained by the City. Kiwanis is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
- I. All certificates of insurance must be on file with and approved by the City before providing any services pursuant to this Agreement. All certificates of insurance required herein must be accompanied by a copy of the additionally insured documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the City's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to performing any services AND a minimum of 30 calendar days prior to expiration of the insurance contract when applicable. All insurance certificates must be received by the City's Purchasing Office before Kiwanis will be allowed to commence or continue services pursuant to this Agreement.

The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

- J. Notices of Accidents (Occurrences) and Notices of Claims associated with the services provided under this Agreement must be provided to Kiwanis' insurer(s) and the City's Purchasing Office as soon as practicable after notice to the insured.

7. INDEMNIFICATION.

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, KIWANIS ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF KIWANIS, OR KIWANIS'S OFFICERS, EMPLOYEES, VOLUNTEERS, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY KIWANIS IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THE AGREEMENT. THE AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**
- B. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT KIWANIS MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST PROMPTLY NOTIFY KIWANIS IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS AGREEMENT.**
- C. THIS AGREEMENT FOR INDEMNIFICATION SURVIVES TERMINATION OR COMPLETION OF THE AGREEMENT. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON KIWANIS'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).**
- D. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES SECTION 768.28. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.**
- E. FURTHER, KIWANIS SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY**

NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET, OR INTELLECTUAL PROPERTY RIGHT.

8. Force Majeure.

Should performance of any obligation (other than payment obligations) created under this Agreement become illegal or impossible by reason of:

- A. A strike or work stoppage, unless caused by a negligent act or omission of either Party;
- B. An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
- C. An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection, riot, civil disturbance, state of martial law, or national or international calamity;
- D. A declared emergency of the federal, state, or local government; or
- E. Any other cause not enumerated that is beyond the reasonable control of the non-performing party;

then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to eliminate the cause of force majeure.

9. Notice. All notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

For City of North Port:

City Manager
City of North Port
4970 City Hall Boulevard
North Port, Florida 34286
ContactNorthPort@cityofnorthport.com

With copies of Notices and Demands to:

City Attorney
City of North Port
4970 City Hall Boulevard
North Port, Florida 34286
northportcityattorney@cityofnorthport.com

For Kiwanis Club of North Port:

Kiwanis Club President
P.O. Box 7222
North Port, FL 34290
Andrewsias@gmail.com
941-740-3981

10. Miscellaneous.

- A. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant shall not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
- G. Complete Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. The City Manager or designee may agree to amendments that do not increase payments to Kiwanis. Only the City Commission can approve increases in payments under this Agreement.
- I. Assignment. Kiwanis shall not assign this Agreement or any right or responsibility herein unless with the written consent of the City.

J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. Kiwanis shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

APPROVED by the City Commission of the City of North Port, Florida on _____ 2022.

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON, B.C.S.
CITY ATTORNEY

EXECUTED on _____ 2022.

KIWANIS CLUB OF NORTH PORT, INC.

By: *Elaine Allen-Emrich*
~~Andrew Sias~~ Elaine Allen-Emrich
President

STATE OF FLORIDA
COUNTY OF SARASOTA

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 9 day of NOV. 2022, by ~~Andrew Sias~~, as President for Kiwanis Club of North Port, Inc.
Elaine Emrich

Karen Arlington
Notary Public

Personally Known OR Produced Identification
Type of Identification Produced _____

