

PROFESSIONAL SERVICES AGREEMENT
(Street Painting Festival Production and Management Services)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered on _____, by and between the City of Lake Worth Beach, a Florida municipal corporation ("City") and SunFest of Palm Beach County, Inc., a Florida Corporation, located at 2811 Sunbury Drive, Jupiter, FL 33458, authorized to do business in the State of Florida ("Consultant").

RECITALS

WHEREAS, the City issued a Request for Proposal (No.24-210) for the provision of the turn-key production and management services for the City of Lake Worth Beach Street Painting Festival held in late February every year property ("RFP"); and

WHEREAS, Consultant has provided the City with a written proposal in response to the RFP to provide the services as described and set out in the RFP ("Proposal"); and

WHEREAS, the City desires to accept Consultant's Proposal, incorporated herein by the reference in order for Consultant to render the services to the City as provided herein; and

WHEREAS, Consultant further warrants that it is experienced and capable of performing the services hereunder in a professional and competent manner; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by Consultant to the City.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and Consultant agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: CONSULTANT'S SERVICES. The Consultant shall provide turn-key production and management services for the City of Lake Worth Beach Street Painting Festival held on Saturday and Sunday in late February every year as more specifically described in the RFP, which is incorporated herein by reference as if set forth in full, Consultant's Proposal not attached but incorporated herein by this reference as if set forth in full and Scope of Services attached hereto as an Exhibit "A" and incorporated herein. The Consultant shall plan, set up and organize the entire event. This Scope of Services is a general description of the Consultant's obligations and responsibilities. If any services, tasks, labor, equipment, or materials are not specifically described in this Exhibit "A" or elsewhere in the RFP but are necessary for the proper performance and provisions of the Services, they shall be deemed to be implied by and included within this Scope of Services to the same extent and in the same manner as if specifically described herein.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of Consultant's, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication. All persons engaged in any of the services performed pursuant to this Agreement shall at all times and in all places be subject to the Consultant's sole discretion,



supervision and control. The Consultant shall exercise control over the means and manner in which it and its employees and others engaged by the Consultant perform the services hereunder.

SECTION 4: TERM, TIME AND TERMINATION.

a. Term. The term of this Agreement shall commence upon the approval of this Agreement and shall be for the period of one (1) year and dependent on the annual appropriation of funds by the City's City Commission. This term may be extended on an annual basis for an additional five (5) consecutive years if considered to be in the best interest of the City. Annual lump sum rates shall remain for all renewals. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

b. Time for Completion. Time is of the essence in the performance of this Agreement. Consultant shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule as set forth in RFP or as otherwise agreed between the parties.

c. Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Consultant or City may suspend its performance under this Agreement as a result of a force majeure event without being in default of this Agreement, but upon the removal of such force majeure event, the Consultant or City shall resume its performance as soon as is reasonably possible. Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the services and, if the Consultant's failure to perform was without its or its sub-consultant's fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

d. Termination without cause. The City may terminate this Agreement at any time with or without cause and without penalty by giving not less than thirty (30) days written notice of termination.

e. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement for breach shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have ten (10) days from the date of the notice in which to remedy the breach unless such breach cannot be cured within that timeframe, in which case the period to cure shall be extended a reasonable time, provided the defaulting party has made and continues to make a diligent effort to effect such cure. If such corrective action is not taken within ten (10) days or the defaulting party fails to act diligently as set forth herein, then the non-defaulting party may terminate this Agreement at the end of the ten (10) day (or other agreed upon) period with written notice to the defaulting party.

f. Early Termination. If this Agreement is terminated before the completion of all services by either party, the Consultant shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

g. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation existing under the laws of the State of Florida, and as such, this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify Consultant of such occurrence and either the City or Consultant may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay Consultant for all services satisfactorily performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

a. Payments. The Consultant expressly acknowledges and agrees that the total all-inclusive, not to exceed cost to complete the Scope of Services for the 2025 Street Painting Festival in accordance with the RFP, the Proposal, and this Agreement is Two Hundred Seventy-One Thousand Two Hundred and Twenty-Two Dollars (\$271,222.00) ("Festival Fee"). The Festival Fee will be adjusted annually by comparing the Consumer Price Index for All Items in the Miami-Fort Lauderdale area from the then current year to the previous year. The Consultant understands and agrees that no additional costs, fees, or other expenses shall be authorized without prior written approval from the City which approval may be withheld in the sole discretion of the City. Further, the City shall not reimburse Consultant for any additional costs, fees, or other expenses incurred as a direct or indirect result of Consultant providing services to the City under this Agreement and not set forth in Exhibit "A." The Consultant must receive prior written approval from the City before providing any additional services.

b. Invoices. Consultant shall submit invoices to the City for services that have been rendered in conformity with this Agreement, the RFP, and the Proposal. The initial invoice shall be for twenty five percent (25%) of the total annual lump sum paid in December, second invoice shall be for twenty five percent (25%) of the total annual lump sum paid on January 15th, and the final invoice for the balance (50%) shall be submitted after all services have been satisfactorily completed. Unless otherwise requested by the City, the final invoice amount shall be offset by any amounts due and owing to the City pursuant to the Revenue Share provision set forth below, and the final invoice shall reflect this offset. Invoices will be reviewed for approval and if an invoice is not approved, the City will notify Consultant within ten (10) days of deficiencies in the invoice. Once the deficiencies are corrected and a new or amended invoice submitted, the City shall make payment within twenty (20) days. Invoices will normally be paid within thirty (30) days following the City's receipt of Consultant's invoice. All invoices shall be paid in accordance with the Local Government Prompt Payment Act, Section 218.70, et. seq.

c. Revenue Share. The Consultant shall timely pay to the City the revenue sharing fees and percentages (paid no later than March 10th of each year) as described below (collectively, "Revenue Share"). It is anticipated that the Consultant's final invoice will include the total amount of the City's Revenue Share as an offset.

I. Beverages: Revenue share percentage of thirty percent (30%) of the Consultant's Gross Total Revenue for beverages. The Consultant shall maintain the records of all receipts for purchases and sales and submit the back-up documentation and balance and profit statements to the City with its payment;

II. Food: A flat rate of revenue share of Twenty-Two Thousand Dollars (\$22,000.00) for the Consultant's food sales; and

III. Sponsorships: A revenue share percentage of sixty percent (60%) of the Consultant's revenue for sponsorships. City is not required to share any profits derived from its own solicited sponsorships with the Consultant. The Consultant shall maintain the records of all sponsorships and submit the back-up documentation and profit statements to the City with its payment.

The Consultant shall prepare and maintain an adequate set of bookkeeping records related to the performance of this Contract including, but not limited to, statements of profit and loss and balance sheets. These documents shall be available for the review, inspection, and/or audit by the City at any time during normal business hours upon request. These records shall be retained by the Consultant for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made or as otherwise required by law.

SECTION 6: INDEMNIFICATION. Consultant, its officers, employees and agents shall indemnify, defend, and hold harmless the City, including its officers, employees, and representatives from and against any and all liabilities, damages, losses, costs, and fees, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, omission, or act of Consultant, its officers, directors, employees, representatives and/or agents employed or utilized by Consultant in the performance of the services under this Agreement. This section shall also apply to the consultant for any infringement upon any copyright, patent, trade secret or other intellectual property, proprietary or ownership interest or legal rights of a third party. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Consultant, nor shall this Agreement be construed as consent by the City to be sued nor as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time. The limitations and waiver set forth in section 768.28, Florida Statutes, are deemed to apply to this Agreement to claims or actions arising in tort, contract, and/or indemnity. The Consultant shall include this indemnification section in any subcontract for the performance of services hereunder. Further, the Consultant will secure this indemnification language (or language substantially similar to this section, as approved by the City) from each of the participating artists and vendors.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 8: PERSONNEL. Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

SECTION 9: SUB-CONSULTANTS. The City reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, Consultant shall indemnify and hold harmless the City for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.



SECTION 10: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. Consultant is not authorized to use the City's Tax Exemption Number.

SECTION 11: INSURANCE. At the time of execution of this Agreement, Consultant shall provide proof of insurance coverage as required hereunder and as otherwise set forth in more detail in the RFP. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and Consultant. All such insurance policies may not be modified or terminated without the express written authorization of the City. The certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City. Compliance with this section shall not relieve the Consultant of its liability and obligations under this Agreement.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Commercial general liability (Products/completed operations, Public and Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Workers' Compensation	\$ statutory limits
Automobile liability	\$1,000,000 combined single limit
Liquor liability	\$1,000,000.00 per occurrence and in the aggregate

All insurance, other than Workers' Compensation, will specifically include the "City of Lake Worth Beach, its officials, employees, agents, and representatives" as an "Additional Insured"; all policies shall apply on a primary, non-contributing basis; and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement. The Consultant shall ensure that all participating vendors' insurance will include the "City of Lake Worth Beach, its officers, employees, agents, and representatives" as an "Additional Insured" on a primary, non-contributory basis.

SECTION 12: SUCCESSORS AND ASSIGNS. The City and Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 13: LAW, VENUE AND REMEDIES; LIMITATION OF LIABILITY; ENFORCEMENT COSTS. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The City shall not be liable to the Consultant for any special, incidental, or consequential damages of any kind whether or not caused by the City's negligence even if the parties have been advised of the possibility of such damages. Other than the Consultant's responsibilities under the indemnification paragraph herein, if any legal action or other

proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of the Agreement, the parties agree that each party shall be responsible for its own attorney's fees.

SECTION 14: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 15: ACCESS AND AUDITS. Consultant shall maintain adequate records to justify all payments made by the City under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Consultant's place of business. In no circumstances will Consultant be required to disclose any trade secret information regarding its products and service costs.

SECTION 16: NONDISCRIMINATION. Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 17: AUTHORITY TO PRACTICE. Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 18: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 19: PUBLIC ENTITY CRIMES. Consultant acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Consultant certifies that it and its affiliates have not been placed on the convicted vendor list within the 36 months immediately preceding this Agreement. The Consultant will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 20: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the City shall be sent to:

City of Lake Worth Beach
Attn: City Manager/Financial Department/Procurement Division
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to Consultant, shall be sent to:



SunFest of Palm Beach County, Inc
Attn: Diana Craven, Executive Director
2811 Sunbury Drive
Jupiter, FL 33458

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 21: ENTIRETY OF AGREEMENT. The City and Consultant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 22: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 23: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement, and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 24: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event Consultant fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to Consultant to terminate for cause.

SECTION 25: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City. The Effective Date is the date this Agreement is last executed by a party.

SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 27: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 28: COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be signed digitally, via email or via facsimile and each such signed counterpart shall be considered as an original of the signing party.

SECTION 29: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, Consultant acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Consultant has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of this Agreement, the RFP (including the Scope of Services, Exhibit "A") which is incorporated herein by reference as if set forth in full and the Consultant's Proposal. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement and the remaining aforementioned documents, the terms and conditions of this Agreement shall prevail. The RFP (including the Scope of Services) shall take precedence over the Consultant's Proposal. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 31: OWNERSHIP OF DELIVERABLES. The City has permanent ownership of all deliverables, work products, specifications, calculations, supporting documents, and any other directly connected or derivative materials produced under this Agreement (collectively "Deliverables"). All such Deliverables shall become and remain the sole property of the City. The City accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents. None of the Deliverables may be used by the Consultant without the express written consent of the City.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of Consultant, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of Consultant for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Consultant does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660,



SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION.

(a) Consultant (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the City (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law. Consultant will not provide or disclose its Confidential Information to the City.

(b) The Consultant acknowledges and understands that any building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building or structure owned by the City are exempt from disclosure pursuant to Section 119.071(3)(b), Florida Statutes.

SECTION 35: SCRUTINIZED COMPANIES.

(a) Consultant certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Consultant may immediately terminate this Agreement at its sole option if the Consultant or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the Consultant certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the Consultant, or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The Consultant agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

(e) The Consultant agrees that if it or any of its subcontractors' status changes in regard to any certification herein, the Consultant shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

SECTION 36: E-VERIFY. Pursuant to Section 448.095(5), Florida Statutes, as amended from time to time, the Consultant shall comply with Section 448.095, as applicable, and:

(a) Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees;



- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an “unauthorized alien” as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;
- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- (f) Be aware that if the City terminates this Agreement under Section 448.095(5)(c), Florida Statutes, the Consultant may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

SECTION 37: COMPLIANCE WITH SECTION 787.06.

By signing this Agreement before a notary public and taking an oath under the penalty of perjury, the Consultant attests and warrants that Consultant does not use coercion for labor or services as defined in section 787.06, Florida Statutes, as amended from time to time.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement (Street Painting Festival Production and Management Services) as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Anne Coyne, MMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: SUNFEST OF PALM BEACH COUNTY, INC.

By: Dan M Goode

[Corporate Seal]

Print Name: Dan Goode

Title: Event Director

STATE OF Florida
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 9th day of November 2024, by Daniel Goode, as the _____ [title] of **SunFest of Palm Beach County, Inc.**, a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FL driver license as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **SunFest of Palm Beach County, Inc.**, to the same.

[Signature]

Notary Public Signature

Notary Seal:

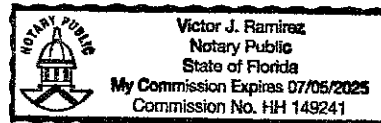


EXHIBIT "A"

SCOPE OF SERVICES

BACKGROUND

The City of Lake Worth Beach has hosted the Lake Worth Street Painting Festival for 30 years. The festival is a tradition that is beloved by the local community and has a legion of devoted followers. During one weekend in February, the City closes the streets of downtown Lake Worth Beach to transform into a temporary outdoor museum and oasis of creativity and imagination. Over 600 artists including feature artists, international artists and students, converge on the City to use the sidewalks and streets as a canvas for their artwork. More than 100,000 visitors come from Palm Beach County and around the world to attend the event. Musical acts play on stages set up along the roadway, food & artisan vendors line the perimeter, but it is the street below your feet that takes the center stage. The event is free to the public.

SCOPE OF SERVICES

The Consultant shall provide turn-key production and management services for the City of Lake Worth Beach Street Painting Festival held on Saturday and Sunday from 10:00 a.m. – 6:00 p.m. in late February every year. All permits, goods and services for the Event must be procured, acquired and paid for by the Consultant. This is a free Event to the public and no admission may be charged. Consultant will be required to work closely with the City to discuss, coordinate and implement strategies for the Event.

The Consultant shall plan, set up and organize the entire event. This Scope of Services is a general description of the Consultant's obligations and responsibilities. If any services, tasks, labor, equipment, or materials are not specifically described in this Exhibit "A" or elsewhere in the RFP or Agreement but are necessary for the proper performance and provisions of the Services, they shall be deemed to be implied by and included within this Scope of Services to the same extent and in the same manner as if specifically described herein.

1. **EVENT PLAN:** Consultant shall provide the proposed event plan for City's approval to include:

- Project Management Schedule.
- Event day timeline and site plan.
- Strategies for outreach to and participation from local brick and mortar downtown businesses to be part of the Event experience.
- Strategies for Artist procurement.
- Travel arrangements for approved feature artists, which will include accommodations and meal allowance (there were 37 traveling artists in 2024).
- Activities designed for children with a range of ages.
- Vendor procurement - types and mix of merchandise and food vendors.
- Permit Applications - coordination with City Services as necessary.
- Coordination with the Palm Beach County Sheriff's Office ("PBSO") for safety and security.
- Coordination with Palm Beach County Fire & Rescue for inspections.
- On-site Operations Management for load in and load out.



- Volunteer recruitment and coordination.
 - Supplies for Artists including chalk & street paint.
 - Any other information that may assist the City in its evaluation of your proposal.
2. **METHODOLOGY:** A complete description of the methodology of the Consultant that would allow it to provide the services.
 3. **ORGANIZATIONAL CHART:** Organizational Chart showing Project Manager and site crew for the Event days shall be provided.
 4. **COMMUNICATION PLAN:** Plan for communication with the City staff, City officials, and participating organizations. Contact information for the Project Manager, site crew, and assistants, including cell phone numbers must be provided at the time of the start of the project. Any changes to the team shall be immediately communicated to the City.
 5. **ENTERTAINMENT:** Consultant shall provide the proposed entertainment, including the type of music, performers, and activities planned for both days of the event.
 6. **GENERAL REQUIREMENTS:** Consultant shall provide 70 feet of space for the exclusive use by the City. The City, at its sole discretion, may waive the use of any part of this space to make room for additional vendors.

Consultant is required to provide monthly written post-event reports delivered via email no later than one week after the event to the City. Reports shall include the name and contact information of all vendors which participated in the event. After the event photos must be included with the post event wrap up reports and delivered by email or through large file transfer media.

7. **SITE DESIGN AND LAYOUT.** The Consultant shall design, develop and implement a site map for the Event production, which shall include the locations of the elements of the Event: The layout should be comprehensive and show full use of the entire available space to accommodate the public. The descriptions/strategies to address the following factors must be included:
 - Food vendors tented;
 - Beverage vendors;
 - Artists/Leisure Services;
 - Performance artists;
 - Children's activities;
 - Artist Hospitality & Supplies Tent;
 - Musical performances;
 - City requires 70 feet for its use at the Event;
 - Portable restrooms;
 - Event parking for disabled, vendors, artists, sponsors and general public (the parking plan must comply with the current parking policies of the City);
 - Generators;
 - Audience layout for the entertainment area (tables, chairs and other seating) will be provided by the Consultant.
 - Strategy for dealing with inclement weather on a scheduled event day.

8. **EVENT MANAGEMENT:** Consultant will coordinate and manage all elements of the Event during Event hours to include agreed upon Event set up time, and time needed to break down, and cleanup site after the Event.
9. **VENDOR APPLICATIONS/LICENSES:** Consultant shall determine all vendors and artists' fees, receive applications and make decisions regarding the selection of vendors, and provide information on all vendors to the City. All vendors, including local City of Lake Worth Beach artist vendors should be considered on the condition that the quality of their art meets the Event's required standards.

All required licenses and permits must be obtained in a timely manner. Items at vendors' booths and vendor activities may not contain political or controversial advertising, imagery or items deemed to be hazardous by the City. All vendors and activities must be approved by the City prior to the Event. The City reserves the right to remove from the Event any and all vendors who or which are not on the vendor list provided by the Consultant and therefore deemed unauthorized to vend at the Event.

10. **FOOD AND BEVERAGE VENDOR SELECTION.** A key feature of the Event is the food & beverage service. Consultant will be responsible for all costs and compensation that may be due to any vendor. Consultant must provide the City with a list of tented food and beverage vendors participating in the Event prior to the Event. No Food Trucks will be permitted. All vendors including local City of Lake Worth Beach food vendors should be considered on the condition that the quality of their food meets the Event's required standards. Consultants should document experience securing food vendors and administering their compliance with insurance, health and safety regulations during an outdoor Event. All food vendors must comply with all local, state and national laws and the Event policies of the City. Food Vendors must be approved by the City prior to confirmation of participation.

NOTE: Vendors who supply different food options than the local brick and mortar downtown Lake Worth Beach restaurants will be given priority.

11. **ARTIST/VENDOR SELECTION:** Consultant will manage the recruitment, qualification and notification of artist participants by using the online event application. Consultant will be responsible for all costs and compensation that may be due to any artist including any travel, meal plan and accommodations for featured artists. Consultants should submit examples of having secured artists, exhibitors and management of art exhibitor communication, coordination and placement upon approval of artist. The City has the right to refer artists to Consultant for consideration.
12. **ALCOHOLIC BEVERAGES:** The sale of alcoholic beverages is permitted. Consultant may decide to own and operate the bar during the Event. All the required liquor safety laws must be adhered to including ensuring that alcohol is not sold to minors. The Consultant must obtain beer and liquor licenses for the Event and provide copies to the City prior to the start of the event. Consultants should document actual capability to perform this service as well as examples of previous experience.

13. **VOLUNTEERS:** Consultant must provide the City with a list of volunteers being used and all volunteers must sign the City's Hold Harmless Certificate provided for the Event. Volunteers and all staff must be properly attired and be courteous and respectful to all guests and City's personnel of City's Officials. The City retains the right to remove persons who do not comply with these requirements from the Event.
14. **MANAGE/SECURE SERVICE PROVIDERS FOR EVENT:** Services required for the Event include: portable sanitary facilities, stage, audio/sound; tents, tables, chairs, electricity generation through generators, lighting, signage, and other necessary contracted services. The Consultant shall contract and pay for these items.
- a. Tents/canopies are required for vendors and must be a pop-up design measuring 10'x10', clean, in good condition, and white.
 - b. The City requires that artists apply weights to their tents to avoid wind damage. All work must be displayed professionally. Tables must be covered to the ground. No storage boxes and other paraphernalia should be visible.
 - c. Exhibits are to be completely set-up 30 minutes before opening of the Event. Set up and breakdown times will be strictly enforced. All artists must keep their booths open until the Event is over. Early booth closing is not permitted!
 - d. Waste removal: Consultants must provide a waste removal plan for public and vendor use throughout the Event. Ample garbage bins with liners must be easily accessible to avoid trash at the event site. Garbage must be collected frequently, in bags and tied before placing in waste collection dumpsters/bins. The City will provide easy access to a waste collection dumpster/area for garbage to be stored.
 - e. Generators and Lighting: Consultant must provide silent/quiet generators for on-site provision of electricity. Some electricity may be obtained from light poles at the City Center. For safety reasons all electrical cords and conduits necessary for booth lighting must be taped down or covered, and clearly marked with bright tape to prevent accidents. Loud generators or cords that are not covered will not be permitted and could result in removal of vendor from the event.
15. **EVENT PERMITTING:** A City operations committee will meet regularly as required with the Consultant to discuss the Event production. An important element is the Consultants' progress in obtaining the appropriate building and fire code permits and compliance with pertinent regulations of the City. Consultants should demonstrate familiarity with variations in permit requirements in different venues and should submit a conceptual plan for managing the process in the City. The selected Consultant will submit, obtain and pay for all permits for the Event and services as required. Consultant must complete the required City of Lake Worth Beach Special Event Permit form provided by the Director of Leisure Services.

NOTE: The City will assist in guiding Consultant through this application process.

16. **SAFETY AND SECURITY:** Consultant will ensure all safety regulations are followed and safe practices are observed. The City of Lake Worth Beach contracts with the Palm Beach County Sheriff's Department (PBSO) for police services. Consultant must make arrangements with and pay PBSO for police and Palm Beach County Fire Rescue for fire and emergency medical services

before the Events. Private security must be used to cover additional event security and at the City's Parking lots where event vendors and staff will be parking. Consultant should document their experience, safety record and any unique approaches to outdoor events.

17. **EVENT MEETINGS:** The Consultant will participate in and provide leadership during all planning meetings. This will include meetings with City staff, and the City/PBSO operations team. The meeting schedule will be held monthly and/or weekly as necessary.
18. **EVENT TIMELINE:** A critical element of success for the Event will be a detailed event timeline with the many items dovetailed to meet deadlines. The Consultant will develop and submit an Event timeline for all installations, deliveries, set-up, event operations, and breakdown for each Event installment.
19. **ENTERTAINMENT:** Consultant will select entertainers and provide a lineup of musical acts for adults and activities for children for the City's approval. Please Note: To refresh the event and create continuing interest from the public, Consultant must rotate musical acts and activities for children throughout both days to add variety and maintain public interest in attending the Event. The City reserves the right to reject or request the change of any entertainer on Consultant's list. Fees for entertainment are the responsibility of the Consultant.
20. **MARKETING AND ADVERTISING:** Consultant will assist with design, develop and disseminate marketing and advertising print and digital materials at the Consultant's expense. All elements of the Marketing and Advertising plan produced must be approved by the City in writing and all final documents provided to the City and its marketing consultants as required. The City reserves the right to change the Event logo and branding images if necessary, after discussions with the Consultant.
21. **SPONSORS:** Consultant may secure cash and in-kind sponsors to defray costs to Consultant and must submit prospective sponsors to the City for written approval in advance. The City, in its sole discretion, will determine the appropriateness of sponsors for Event participation. The City may also secure cash and in-kind sponsors to defray costs to the City. Consultant will not have access to those funds. The City and Consultant will coordinate regarding Sponsors to ensure a variety of Sponsor types. Consultant will assist with all sponsor (City's and Consultant's) servicing, including grid creations pre-Event, on-site and post-Event fulfillment obligations.
22. **ADDITIONAL SELECTED CONSULTANT'S RESPONSIBILITIES:** As the Event operator, the selected Consultant shall be responsible for the following contractual obligations regarding the operations of the facility:
 - a. All taxes, fees, licenses and permits.
 - b. Responsible for all artists and entertainers, events staff, vendors and support contractors' costs and any other costs related to the operations of the event.
 - c. Uniforms for event staff (City must approve design and style).
 - d. All event service fees.
 - e. Pay all costs associated with any other item not expressly outlined in the Contract.
 - f. Carry alcohol license at their sole expense.
 - g. Consultant is required to hire PBSO for the event for the entire duration of event.



- h. Site management and post event clean up.
- i. Compliance with all laws, regulations, and ordinances applicable to public events or otherwise applicable to the use.
- j. The Consultant will operate in a manner that will ensure the convenience and safety of the public.
- k. All employees of the Consultant shall be neatly attired at all times in uniforms that properly identify them. All uniforms worn shall be maintained in a neat and clean manner.
- l. The City's Leisure Services Department Director shall have the right to require any employee(s) of the Consultant to be permanently removed from the event whenever it appears to be in the best interest of the City.
- m. When requested by the City, the awarded Consultant shall use City applications, releases, and other forms to ensure the City is fully protected from any liability caused by the Consultant, artists, and vendors or otherwise arising out of the event. Further, the Consultant shall secure licenses, in a form acceptable to the City, from all artists which grant the City the license to photograph, video or otherwise record images (collectively, "recordings") of the artist and his or her artwork created at the event and to use/reproduce such recordings without compensation.

