



FLAGLER BEACH CITY COMMISSION

Item No. 7

Meeting Date: January 11, 2024

Issue: Approve the amended First Friday Agreement

Summary provided by: Dale Martin, City Manager

Background: In previous discussions the Commission agreed they were willing to contribute to the cost of entertainment for the First Friday events. After hearing from the promoter, the commission directed the City Attorney to work with Mr. Shank to develop amendments to the Agreement. Additionally at the November 9, 2023 meeting the Commission reached a consensus that during the construction of the hotel the city would sponsor tables for businesses with a Flagler Beach Local Business Tax Receipt.

BUDGETARY IMPACT: The agreement includes a \$200 sponsorship of up to 10 vendor tables, who have a Flagler Beach LBTR. The agreement includes the City funding personnel expenses for the Maintenance and Police Departments, and a \$500 reimbursement per event to assist with entertainment expenses.

PERSONNEL: Attorney Smith

POLICY/REQUIREMENT FOR BOARD ACTION: Motion to approve the agreement and authorize the Mayor to sign same.

IMPLEMENTATION/COORDINATION:

Attachments

- Amended Agreement

AMENDED AND RESTATED
FIRST FRIDAY EVENT MANAGEMENT AGREEMENT

This agreement is made and entered into this _____ Day of January, 2024, by and between the City of Flagler Beach , whose mailing address is 105 S. 2nd Street, Flagler Beach, Florida 32136 (hereinafter referred to as the ("City")) and Laverne McNeil Shank, Jr., d/b/a "Surf 97.3 FM," whose mailing address is P.O. Box 1226, Flagler Beach, Florida 32136 (hereinafter referred to as the "Event Manager").

WHEREAS, the City and the Event Manager have entered a contract for management of the City's First Friday Events ; and

WHEREAS, the parties desire to amend and restate the existing contract with the provisions set forth herein; and

WHEREAS, the purpose and objective of the First Friday Event is to enhance the Flagler Beach Community Redevelopment Area by conducting monthly events of an appropriate scale that generate community engagement and pedestrian foot traffic that enhance and support the business community located within the Community Redevelopment Area; and

WHEREAS, the Event Manager desires to assist the City in managing the First Friday Event and has the necessary skills to do so; and

WHEREAS, the City of Flagler Beach has approved this Agreement at a duly noticed public meeting and authorized its execution.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, IT IS AGREED AS FOLLOWS:

1. The purpose of this agreement is to provide a framework for a partnership between the CITY and the Event Manager to manage the City First Friday Events. The First Friday Events will be conducted in Veteran's Park and upon Central Avenue, and other rights-of-way located near Veteran's Park approved in advance by the City Manager of the City of Flagler Beach or his or her designee (hereinafter referred to as the "City Manager").
2. This Agreement shall be effective upon execution by all parties hereto and shall run annually at each anniversary unless either party requests the Agreement be cancelled upon 90 day written notice to the other party.
3. All activities conducted by the Event Manager shall be coordinated with the City Manager or designee.

4. The Event Manager shall be responsible for securing vendors, sponsors, staffing, and entertainment for all First Friday Events during the term of this Agreement. The Event Manager shall be responsible for ensuring all vendors and sponsors abide by all laws, regulations, codes, and rules established by any government with jurisdiction.

5. The Event Manager shall be responsible for payment for all services provided to the First Friday Event with exception of the City funded assistance specified below:

a. Police and Maintenance personnel, payroll;

b. The amount of \$500.00 per event to assist with band costs. This amount will be billable to the City when a recap of costs is presented to the City on a monthly basis;

c. For each First Friday Event, the City will sponsor up to ten (10) tables for vendors who have a permanent location in Flagler Beach and who hold a Flagler Beach business tax receipt (the "City Sponsored Tables"). The amount paid by the City for each such vendor shall be at a sponsorship level of \$200.00; the City Sponsored tables shall be available on a "first come, first-served" basis.

6. The Event Manager shall indemnify and hold the City harmless from any debt or claim of any debt for any service rendered to a First Friday Event.

7. The City and the Event Manager agree that the stage area for entertainment shall typically be conducted using a tent and concrete slab; however, upon approval in advance by the City Manager, in the City Manager's sole discretion, the Event Manager may use a larger stage, the cost of which shall be borne by the Event Manager.

8. All proceeds from vendor fees and event sponsorships collected by the Event Manager shall be applied first to cover all costs of the First Friday Event, including direct and in-kind service costs paid or supplied by the City. Any excess proceeds from vendor fees and event sponsorships remaining after payment of costs ("Net Proceeds") shall go to the Event Manager. The Event Manager shall maintain books and records consistent with Generally Accepted Accounting Principles and shall provide an accounting to the City Manager for each First Friday Event.

9. The Event Manager shall not allow "food trucks" at any First Friday Event. For the purpose of this Agreement, "food truck" shall mean any motorized self-propelled vehicle with cooking facilities and/or serving facilities located inside or attached to the vehicle. "Foodtruck" shall also mean any trailer longer than eight feet from the front most point to the rear most point containing cooking facilities and/or serving facilities located inside or attached to the trailer.

10. The Event Manager shall have broad latitude regarding the placement of tables, vendors, and activities within the boundaries of the First Friday Events. At least seventy-two (72) hours prior to each event, the Event Manager shall provide to the City Manager for final approval a proposed staging plan showing each vendor, sponsor table, and Gratis Table. The final approval of the City Manager shall not be unreasonably withheld.

11. The Event Manager shall be responsible for arranging and setting up all necessary services and infrastructure for each First Friday Event. Set up may begin twenty-four (24) hours prior to each First Friday Event.

12. The Event Manager shall be responsible for breaking down and removing all infrastructure placed or erected for each First Friday Event. Break down and removal shall be completed no later than forty-eight (48) hours after each First Friday Event.

13. The Event Manager shall be responsible for returning or restoring all property owned by the City of Flagler Beach to the condition in which it existed prior to each First Friday Event.

14. In the event the Event Manager has more requests for vendor spaces than are available at any First Friday Event, the Event Manager shall prioritize requests in the following order: 1) vendors with a location within the Community Redevelopment Area; 2) vendors with a location within the City of Flagler Beach; 3) vendors with a location within Flagler County; 4) all other vendors. Selection of vendors shall be made using this priority order at each First Friday Event.

15. The Event Manager is an independent contractor. Neither party is or shall purport to be an agent, employee, partner, joint venture or associate of the other. An employee or agent of one party shall not be deemed an employer or agent of the other party for any purpose. The Event Manager shall be responsible for all taxes or regulatory payments due.

16. The Event Manager shall not assign, convey or transfer any right or interest in this Agreement to any other party.

17. The parties recognize that as an outdoor event the First Friday Event is affected by weather and other naturally occurring disruptions. The parties also appreciate that the CITY's foremost concern is the safety of all participants. Therefore, the CITY, either by its Board or by its City Manager, may reschedule or cancel any First Friday Event due to inclement weather or the threat of inclement weather or other circumstances beyond the City's control. Under no circumstances shall the City be responsible for any cost, payment, claim, or loss suffered or incurred by the Event Manager if a First Friday Event is rescheduled

or cancelled.

18. By execution of this Agreement, the Event Manager, on behalf of himself and his agents, employees, heirs, and assigns, hereby releases the CITY, the City of Flagler Beach, and their agents, employees, officers, and assigns from any or all loss, injury, damage, liability, or claim, or expense related to the Event Manager's performance pursuant to this Agreement; provided, however, the Event Manager does not release the CITY or the City of Flagler Beach from any liability or claim arising out of the sole negligence or intentionally wrongful act of the CITY, the City of Flagler Beach, or their agents, employees, officers, or assigns.

19. The City shall provide general liability insurance coverage for the First Friday Events at no charge to the Event Manager. The Event Manager shall be responsible for any other insurance required by law or that it deems appropriate.

20. The parties recognize and acknowledge the Event Manager shall be subject to Florida's public records laws contained with Chapter 119, Florida Statutes, with regard to records received or created related to the performance of this Agreement. The Event Manager shall keep and maintain all records received or created which are in any way related to its performance of this Agreement and shall provide such records to the City of Flagler Beach without delay upon a request for same. Furthermore, the Event Manager recognizes it could receive direct requests for public records from members of the public and agrees it shall be responsible for complying to such requests in accordance with law after consultation with the City of Flagler Beach. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 517-2000, poverstreet@Cityofflaglerbeach.com, 105 S. 2nd Street, Flagler Beach, Florida 32136.** The City Clerk shall assist the Event Manager to comply.

21. Either party may terminate this Agreement for cause for any breach of this Agreement upon written notice stating the nature of the breach and giving five business days' opportunity to cure. If the breach is not cured within the five business days' allowed, this Agreement shall be deemed terminated without further act or notice at midnight on the fifth (5th) business day after the mailing, emailing, or hand delivery of the notice.

22. This Agreement may be terminated for convenience by either party upon ninety (90) calendar days' written notice. If either party serves the other notice of termination for convenience this Agreement shall be deemed terminated without further act or notice at midnight on the ninetieth (90th) calendar day after the mailing, emailing, or hand delivery of the notice.

23. Any notice to be served pursuant to this agreement may be mailed to the address provided in the introductory paragraph, emailed to an address provided by either party, or hand delivered to the signatories below or any other person or address provided in writing by the party to receive notice.

24. This Agreement, in conjunction with Exhibit "A," represents the full and complete agreement of the parties. This Agreement shall only be amended in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement

CITY OF FLAGLER BEACH

City Manager

EVENT MANAGER

Laverne McNeil Shank, Jr., d/b/a "Surf 97.3 FM,"