

**LICENSE AGREEMENT
SEPTEMBER 2022 THINKPINK Color Fun Run EVENT**

This License Agreement (the "Agreement") is made this ____ day of _____, 2022, by and between the City of Winona, Minnesota, a municipal corporation under the laws of the State of Minnesota (the "Licensor" or "City"), and Winona Health Services, a nonprofit corporation under the laws of the State of Minnesota (the "Licensee"); (collectively the "parties").

RECITALS:

WHEREAS, the Licensor is the owner of the Unity Park and adjacent parking lot, the East Lake Winona walking and biking trail, and Parks Ave, all located in the City of Winona, County of Winona, State of Minnesota; and

WHEREAS, the Licensee is a nonprofit corporation under the laws of the State of Minnesota; and

WHEREAS, the Licensee desires to hold a THINKPINK Color Fun Run on Parks Ave; and

WHEREAS, the Licensor is willing to permit such use, subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

1. Premises. The Licensor is the owner of the Unity Park and adjacent parking lot, the East Lake Winona walking and biking trail, and Parks Ave in the City of Winona (the "Licensed Premises" or "public areas"). The Licensee is hereby granted a terminable license to use the public areas to hold an un-timed fun run / walk event according to the specifications, which are attached hereto and incorporated herein by reference as Exhibit A. The Licensee shall use the specified public areas only for the purposes stated.
2. Term. The term of this Agreement shall be: Saturday, October 8, 2022 from 8:00 a.m. to 1:00 p.m.
3. Purpose. The following event is hereby approved by the City of Winona: an un-timed run / walk starting and ending at Unity Park, going around Parks Ave and the East Lake Winona walking and biking trail as shown on the route depicted in Exhibit A.
4. Permits and Inspections. The Licensee agrees to obtain the permits and pay the permit fees as may be required by the City and other governing bodies with respect to its use and operations in the Licensed Premises, including any vendors. This Agreement does not exempt the Licensee or any participants or

spectators from observing all ordinances, especially those pertaining to noise. Inspections may be made by City staff of Licensee to ensure compliance with all applicable City Code and state law.

5. Portable Restrooms. The location of all portable restrooms shall be approved by the Public Works Department. The restrooms shall be properly maintained and serviced, as needed, throughout the event.
6. Use of Licensed Premises. Subject to the other terms and provisions contained herein, the Licensee shall be permitted to use the Licensed Premises only for the limited purpose and only for the term stated above. During the term of this License, the Licensee shall comply with all applicable laws, regulations, conditions, and covenants affecting the Licensed Premises, whether federal, state, local, or contractual. The Licensee shall not commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises. Should the Licensee commit or allow to be committed any waste on or destruction to the Licensed Premises, the Licensee shall immediately restore the Licensed Premises to the original condition of the Licensed Premises at the inception of this License Agreement, or, alternatively, pay to the Licensor the cost of restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs. In addition, the Licensee shall be responsible for cleaning the Licensed Premises to the satisfaction of the City at the close of the event. At the end of the Event, the Licensee shall restore the Licensed Premises to its original condition at the inception of this License Agreement. Should the Licensee fail to restore the Licensed Premises to its original condition, the Licensor shall do so and the Licensee shall pay to the Licensor the cost of restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs.
7. Assignment or Transfer of License. Licensee shall have no right to assign its interest in this License Agreement without the prior written consent of Licensor. The Licensee, however, may license and sublet portions of the Licensed Premises to licensees, vendors and participants in the event, provided that the substance of this Agreement is carried forward into any agreements with licensees and vendors.
8. Maintenance/Alteration of Licensed Premises. During the event, the Licensee shall keep the Licensed Premises in a sanitary condition and keep the Licensed Premises free from refuse. The Licensee shall instruct all vendors about recycling requirements and the location of receptacles for the collection of recyclables. The Licensee shall be responsible for the repair of any damages to the Licensed Premises resulting from its use thereof pursuant to this Agreement. The Licensee shall not be permitted to make any alterations to the Licensed Premises without the prior written consent of the Licensor. On termination of this

Agreement, the Licensee shall, at the Licensee's expense, restore the Licensed Premises to the condition they were originally in at the inception of this Agreement, excepting reasonable wear and tear.

9. The Licensors Access. The Licensors, its employees, and its agents shall have the right to enter the Licensed Premises at all times for all reasonable purposes, including, without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting, cleaning, repairing, altering, or improving the Licensed Premises. Nothing in this Agreement shall be interpreted as requiring the Licensors to perform any such acts independent of the requirements of the other provisions of this Agreement.

10. Insurance and Hold Harmless Provisions.

A. Hold Harmless Agreement

The Licensee assumes and agrees to pay for all loss or damage to property whatsoever and injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however arising from or in connection with the existence, construction and maintenance or use of any facilities used by the Licensee in connection with the event. The Licensee shall indemnify the City against and agree to save it harmless from any and all claims, demands, lawsuits, or liability for, and such loss or damage, injury, death, and costs and expenses incident thereto. The indemnification provisions of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the Licensors. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

This clause shall not be interpreted to release any vendor or operator from the requirement to provide insurance and certificates of insurance to the Licensors as provided below, before set-up of operations will be allowed.

B. Liability Insurance Coverage

The Licensee shall, at its expense, maintain in effect liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04; the City of Winona shall be named insured. The insurance policy and certificate shall not be canceled or its conditions altered in any manner without ten (10) days prior written notice to the City Manager of the City of Winona. The insuring company shall deliver to the City Clerk, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied.

Licensee shall require that all vendors and operators are covered by general liability coverage and that the Licensors has been named as an additional insured. No vendor or operator shall be allowed to set-up operations until the Licensee

has verified that the vendor or operator has the required general liability insurance coverage.

11. Cost of Electricity. The Licensee will be responsible for paying for the costs of electricity used in conjunction with the event.
12. Traffic and Crowd Control. The Licensee shall be responsible for establishing an adequate traffic and crowd control system. This system must be coordinated with and approved by the Police and Fire Departments. Every effort must be made by the Licensee to prevent parking in prohibited areas.
13. Removal of Equipment, Tents and Portable Restrooms. All tents and equipment shall be removed at the close of the event. The portable restrooms and dumpster shall be removed no later than October 4, 2022. The Licensee shall clean the area after the close of the event. Representatives from the City and the Licensee shall inspect all public areas at the close of the event to release the Licensee from its obligations under this agreement.
14. Contact Information. The Licensee shall designate the contact persons responsible for the various areas or activities of the event and provide the City with the names and phone numbers of the contact persons.
15. Termination of License. If at any time the Licensee breaches a material term of this Agreement, then this Agreement shall become null and void, at the option of the Licensor, immediately upon the Licensor's provision of written notice of the same to the Licensee.
16. General Terms.
 - a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
 - b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
 - c. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.

- d. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the parties.
- e. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Licensee agrees that the Licensors, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Licensee and involve transactions relating to this Agreement. The Licensee agrees to maintain these records for a period of six years from the date of termination of this Agreement.
- f. Governing Law. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- g. Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*
- h. No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- i. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- j. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof superseding all prior agreements and understandings. All discussions and negotiations are deemed merged in this Agreement.
- k. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this

Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

- I. Survivability. All covenants, indemnities, guarantees, relicenses, representations and warranties by any party or parties, and any undischarged obligations of the Licensor and the Licensee arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- m. Compliance with Laws. The Licensee shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which the Licensee is responsible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WINONA HEALTH SERVICES

By: _____

Its: _____

And By: _____

Its: _____

CITY OF WINONA

By: _____

Chad Ubl

Its: City Manager

And By: _____

Monica Hennessy Mohan

Its: City Clerk

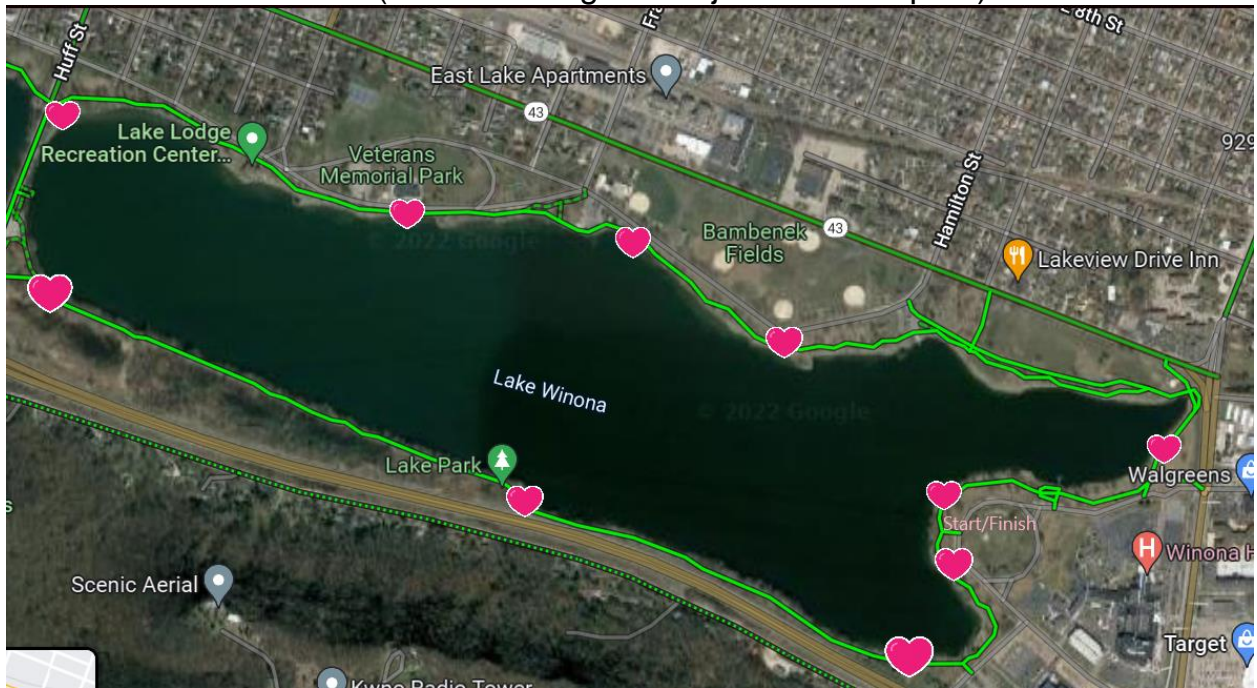
Exhibit A

Schedule:	Saturday, October 8, 2022
8:00 a.m.:	Set up / Registration / Parks Ave closed to traffic
9:00 a.m.:	Run / walk begins
11:00 a.m.:	Run / walk ends
After event:	Clean up
1:00 p.m.:	Vacate premises

Specific requests or conditions:

1. The City shall post Parks Ave Circle with "No Parking" signs by Friday, October 7, 2022 that read, "No Parking, Saturday, October 8, 2022, 6:00 a.m. through 1:00 p.m.
2. The City shall provide four (4) barricades for use on Parks Ave by 2:00 p.m. on Friday, October 7 placed in the locations denoted on the map.
3. The Licensee shall not commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises. In addition, the Licensee shall be responsible for cleaning the Licensed Premises to the satisfaction of the City at the close of the event. The Licensee shall restore the Licensed Premises to its original condition at the inception of this License Agreement. Should the Licensee fail to restore the Licensed Premises to its original condition, the Licensor shall do so and the Licensee shall pay to the Licensor the cost of restoring the Licensed Premises to the condition herein stated, payment to be made within 30 days from the date of written notice given by Licensor to the Licensee of the amount of such costs.
4. The Licensee shall be responsible for establishing an adequate traffic and crowd control system. This system must be coordinated with and approved by the Police and Fire Departments. Every effort must be made by the Licensee to prevent parking in prohibited areas.

Color dust locations (to be on the grass adjacent to the path)



Street Closure

(O=staging area; Red line=barricades; green arrows=vehicle turnaround area)

