



## **VENDOR AGREEMENT – WINTER 2023**

### **DOWNTOWN WESTFIELD ASSOCIATION**

This Westfield Winter Market (WWM) Vendor Agreement ("Agreement") Winter 2023 is made between the Downtown Westfield Association ("DWA"), located at 116 East Main Street, Westfield, IN 46074-8924, and the 2023 Westfield Winter Market Vendor (Hereinafter, "Vendor").

#### **RECITALS**

West Fork Whiskey Company is located at 10 E 191st St., Westfield, IN 46074. The Vendor desires to use a 6-foottable space within West Fork Whiskey Company at the discretion of DWA for the use and purposes outlined in this Agreement; and,

The Downtown Westfield Association (DWA) agrees to permit the Vendor's use of a vendor space according to the terms and conditions of this Agreement:

IN CONSIDERATION of the mutual covenants and conditions, the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DWA and Vendor agree as follows:

#### **A. LICENSE**

DWA will grant a temporary exclusive license to the Vendor to use a vendor booth space in the specified location determined by the DWA Market Manager. The license is based on information provided in the Vendor Application.

#### **B. PROPOSED USE**

The Vendor will use the licensed space only for items and services approved by the DWA Staff. Any brochure, handout, catalog, or price list that describes your product or service must be included with your application and be approved for distribution by the DWA Staff. This proposed use is pursuant to and in compliance with this Agreement's terms and conditions and for no other purpose (the "Permitted Use"). The Vendor will take all necessary action required to ensure the safety of the participants, invitees, guests, and the public attending the event and will be solely liable for any damages or injuries, including death, that arise as a result of the Permitted Use of the licensed space. The Vendor's requirements for the preparation and setup of the licensed space as defined and approved by the DA Staff and attached to this Agreement.

#### **C. RESERVED DATES**

Upon payment of the WWM invoice, the licensed space will be reserved for the Vendor specified in this Agreement.

**D. USE REQUEST / EVENT FEE**

To reserve the licensed space, the Vendor must complete, execute, and deliver this Agreement to the DWA Staff. Any request may be denied by the DWA Staff if, in its sole discretion, it determines that the proposed request is inconsistent with the overall mission of the WWM. Upon approval of the Application, the Vendor must pay all fees for the entire season in full to use the licensed space. In the event that a Vendor misses a market, or a market is canceled due to weather, the fees will be non-refundable.

**E. FEES**

All fees, costs, and damages incident to the use of the licensed space or the Common Areas will be paid without offset by the Vendor.

The base fees for the use of the licensed space ("Vendor Fees") are controlled by the DWA Staff and are outlined in the Application, attached hereto and incorporated by reference herein. The Vendor Fees do not include any of the cost of any staffing, security services, catering, or event management, which are the sole cost and expense of the Vendor and are subject to the terms and conditions of this Agreement.

In addition to the Vendor Fees, the Vendor will be required to pay (i) any charges to clean up West Fork Whiskey Company to restore West Fork Whiskey Company to the condition existing before the event incurred by DWA Staff after an event, and (ii) the cost to repair and replace any damage to West Fork Whiskey Company.

**F. PARKING, UNLOADING & LOADING**

The Vendor will be provided with detailed loading and unloading instructions before the event. Vendor will have the non-exclusive use of those specific parking areas at the WWM subject to any and all rules and regulations for those areas, including restricted or reserved spaces and drop-off and loading zones.

**G. WEST FORK WHISKEY COMPANY REGULATIONS, POLICIES, AND ORDINANCES**

The Vendor will ensure that its officers, employees, agents, contractors, licensees, guests, and invitees abide by all rules, regulations, and policies promulgated by the West Fork Whiskey Company. Please find the listing of rules, regulations, and policies below. Any updates or amendments will be provided to Vendor before the event.

- a. No helium balloons
- b. No tape, adhesive products, or command strips on walls or floors
- c. No animals other than service animals
- d. No drones
- e. No open flames

**H. DAMAGE AND ALTERATION OF WEST FORK WHISKEY COMPANY**

- a. Vendor and its officers, employees, agents, contractors, licensees, guests, and invitees will not injure, damage, mar, or deface West Fork Whiskey Company its associated facilities, the parking areas, the areas surrounding West Fork Whiskey Company and improvements, appurtenances and any equipment contained or located therein.
- b. Vendor will not cause or permit anything to be done that in any way injures, damages, mars or defaces West Fork Whiskey Company, its associated facilities, the parking areas, the areas surrounding West Fork Whiskey Company, and improvements, appurtenances, and equipment contained or located therein, and will not drive or permit to be driven, nails, hooks, tacks or screws into any part thereof and will not make or allow to be made any alterations of any kind therein.

**I. EQUIPMENT**

Vendor agrees that it and its officers, employees, agents, and contractors will only use equipment, furniture, or fixtures that comply with the City of Westfield Fire Marshal standards. It must be flame-retardant, in good working order, and regularly maintained. All equipment must be supplied by the Vendor and approved by the DWA Staff.

**J. NON-SMOKING**

The licensed spaces are designated as non-smoking at all times. Vendor will be responsible for any, and all fines levied for violation of this policy and for any damage resulting from the violation of this policy.

**K. USE OF NAME / ADVERTISING**

- a. Without the express written consent of the DWA Staff, the Vendor will not use WWM logo or trademark in its advertising.
- b. An approved Vendor can use the 'Westfield Winter Market at West Fork Whiskey Company' in all social media and advertisements without written consent.
- c. The Vendor agrees to submit all press releases and advertisements to the DWA Staff for review and approval by the DWA Staff before publication.
- d. No signs, messages, flyers, posters, or other advertising materials may be posted, displayed, or distributed, nor will Vendor make any announcements by loudspeaker, public location system, or otherwise without having obtained prior written permission from DWA Staff.
- e. DWA Staff must approve all signage. Any approved materials may not be fastened or affixed to any part of West Fork Whiskey Company except in locations designated and approved by the DWA Staff and may not be permitted to interfere with crowd movement and safety.

**L. LICENSES AND COPYRIGHTS**

Vendor agrees and warrants that no music, literary or artistic work, or property protected by license or copyright will be performed, reproduced, or used in connection

with its activities in licensed space unless the Vendor, its officers, employees, agents, or contractors have obtained permission from the copyright or license holder or have obtained appropriate licensing to use such works.

**M. BROADCAST AND RECORDING RIGHTS**

DWA Staff reserves all rights and privileges for radio and television broadcasts, whether live or transcribed for delayed transmission, and all visual or audio recordings originating from the Licensed space. Broadcasting and recording, and the allocation of revenues derived therefrom, will be negotiated as a part of the execution of this Agreement. Should DWA Staff grant to the Vendor any such rights and privileges, DWA Staff reserve the right to require advance payment of any estimated costs that WWM Staff may incur with respect to the broadcasts or recordings. Any contract involving broadcast or recording rights must first be submitted to the DWA Staff for review and approval by the DWA Staff and then be signed by all relevant parties thereto before any broadcast or recording date.

**N. COMPLIANCE WITH LAWS**

- a. The Vendor, its officers, employees, agents, contractors, licensees, guests, and invitees will comply with all pertinent federal, state, local and municipal laws, codes, ordinances, rules, and regulations, including but not limited to fire, building safety and health codes applicable to the Permitted Use of Licensed space.
- b. The Vendor, its officers, employees, agents, and contractors will obtain and maintain in full force and effect all permits, licenses, and authorizations required by governmental and quasi-governmental agencies.
- c. The Vendor will advise the DWA Staff of all permits and licenses required for its Permitted Use.
- d. The Vendor will pay any fees and expenses required relative thereto.
- e. The Vendor will pay all taxes imposed by law in connection with its Permitted Use of the Licensed space.

**O. INSURANCE**

The Vendor must provide a General Liability Certificate of Insurance for \$1,000,000 listing the West Fork Whiskey Company (10 E 191st St., Westfield, IN 46074) and Downtown Westfield Association (116 East Main Street, Westfield, IN 46074-8924) as additionally insured.

**P. INDEMNIFICATION**

- a. Vendor agrees to defend, indemnify, and hold harmless West Fork Whiskey Company, the Downtown Westfield Association, and DWA Staff and their officers, employees, and agents, their successors, their respective employees, and agents, to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including associated costs, expenses, and reasonable attorneys' fees incurred on account thereof, that may be asserted for any loss, damage, death, or injury to persons or property arising in any manner out of or incident to the use and

occupancy of the Licensed space by Vendor, its event participants, employees, agents and contractors, Vendor's acts or omissions, or Vendor's performance or nonperformance of this Agreement.

**Q. MODIFICATION/CANCELLATION**

Absent a written agreement between the DWA Staff and the Vendor, this Agreement may not be modified nor canceled by DWA Staff except when the Vendor fails to comply with the terms and conditions of this Agreement, hinders, or otherwise interferes with the use of West Fork Whiskey Company by another Vendor, tenant or other permitted organization, fails to show adequate financial resources for the presentation of the event, is not willing or able to perform adequately its duties and responsibilities required for the event or similar cause in the sole judgment of the DWA Staff or where the Vendor poses a potential hazard to public safety.

**R. FORCE MAJEURE**

Any delay or failure of either party to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, or court injunction.

**S. VIOLATION OF LAWS**

If in DWA Staff's reasonable opinion, at any time the Vendor's officers, employees, agents, contractors, licensees, guests, or invitees violate(s) an applicable rule or regulation, the rules and regulations (if any) of the Downtown or the ordinance or the applicable laws of the City of Westfield, Hamilton County or the State of Indiana or the United States of America, Vendor will direct the offender to cease and desist from continuing such illegal or improper use or behavior. Notwithstanding anything to the contrary contained in this Agreement, the DWA Staff expressly reserves its right at any time upon prior notice to Vendor (except in emergencies) to cause the removal of any of Vendor's officers, employees, agents, contractors, licensees, guests, or invitees, who in the reasonable discretion of DWA Staff has engaged or is engaging in illegal, undesirable, disruptive or hazardous behavior.

**T. CHOICE OF LAW**

This Agreement will be governed by the laws of the State of Indiana, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement will be conducted in the Circuit or a Superior Court of Hamilton County, Indiana.

**U. AUTHORITY**

Each party to this Agreement represents and warrants that the person signing this

Agreement is fully authorized by the party to execute this Agreement for and on behalf of the party and bind the party to the terms and conditions set forth herein.

**V. ENTIRE AGREEMENT**

This Agreement, together with any exhibits or addenda annexed hereto, constitutes the entire Agreement of the parties on the specific subject matter of this Agreement only and does not in any way affect any other agreement by and between the parties to this Agreement and supersedes all prior representations, understandings, and agreements between the parties with respect to the subject matter. Any invalidity, in whole or in part, of any provisions of this Agreement, will not affect the validity of any other of its provisions. No term or provision hereof will be deemed waived, and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The provisions of this Agreement that by meaning and context are intended to survive the completion of performance, expiration, or termination of this Agreement (which will include by way of example and not limitation repair and indemnification provisions) will so survive the completion of performance, expiration or termination of this Agreement. This Agreement may be amended or modified only in writing executed by authorized representatives of each party.

**W. COUNTERPARTS**

This Agreement and any amendments may be executed in any number of counterparts, each of which will be an original and all of which together will constitute the same document, binding on all Parties, notwithstanding that each of the parties may have signed different counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as the date of digital signature.