

## CITY OF CLEARWATER SPECIAL EVENT AGREEMENT

This Agreement ("Agreement") dated as of \_\_\_\_\_ 2019 is by and between the City of Clearwater, Parks and Recreation Department ("City"), P.O. Box 4748, Clearwater, FL 33758 and Beasley Media Group, LLC, owner and operator of WLLD(FM) ("Beasley" "Station" or "Partner"), 9721 Executive Center Drive N, Suite 200, St. Petersburg, FL 33702, with respect to a venue and certain production services for the Beasley WiLD Splash event ("Event"), scheduled to take place on March 2, 2019 at Coachman Park, 301 Drew Street, Clearwater, FL 33755 ("Venue").

### **WITNESSETH:**

**WHEREAS**, the City produces several special events during the year for the enjoyment and entertainment of the citizens of Clearwater and the surrounding area; and

**WHEREAS**, the City desires to offer these events at the lowest cost possible to the participants; and

**WHEREAS**, in order to offer quality professional events, the City recognizes its need to develop partnerships with local radio and entertainment organizations; and

**WHEREAS**, Partner and City desire to enter into an Agreement to develop and promote an Event benefiting both Partner and City.

1. **TERM.** The term of this Agreement ("Term") shall begin and continue through the later of the conclusion of the Event, which is currently scheduled for March 2, 2019, or the date on which all obligations of the parties set forth herein have been fulfilled.
2. **PARTNER RESPONSIBILITIES.** Partner agrees that it shall be responsible for the following, unless modified by Section 16 "Unique Provisions/Conditions", noting that Section 2b may not be modified and Section 2a requiring City pre-approved vendors may not be modified:
  - a. Partner agrees to and shall be responsible for producing, organizing, and coordinating Event, including but not limited to, contracting and arranging artists; costs for backline, sound, stage, roof, lighting, and stage crew; costs for event fencing through City's pre-approved vendor(s); and as may be required by band riders or City, costs for police, security, and paramedic/EMT services, costs for artist catering, costs for rider fulfillment, and costs for backstage VIP/sponsor hospitality area(s) at Event. City agrees to keep costs for items listed above as efficient and competitive as possible. Partner shall be responsible for costs at settlement.
  - b. Partner agrees that all backline, sound, stage, roof, lighting, and event fencing will not be altered, or requested to be altered, in such a way as to not meet City and State requirements, including safety and wind requirements set forth by City.
  - c. Partner shall pay City the flat fee set forth and agreed to in Section 5(a) for use of the Venue and for any other mutually agreed upon services requested by the Partner provided by City hereunder ("Fee").
  - d. Partner agrees to use City's exclusive ticketing system/vendor for all ticket sales for Event. Ticket revenue, if applicable, from the sale of the tickets shall belong to Partner based on the percentage in Section 5a. City, upon receipt of final settlement check from the ticketing vendor, will deposit the check into City's Event Development account, then issue a check to Partner within 21 days for

the amount of Partner's percentage of ticket sales minus any settlement deductions and/or fees outlined in the Agreement.

- e. Partner shall be responsible for promoting Event.
- f. Partner shall have the right to sell or obtain third-party sponsorships and vendors for inclusion to Event, including onsite and pre-promotional partners; however, Partner is not obligated to do so. Partner shall retain all gross revenues as outlined in Section 5e from the sale of such third-party sponsorships or vendors.
- g. Partner shall be responsible for all artists requests for accommodations, transportation, catering, riders, production, and any other cost associated with the performing artists.

3. **CITY'S RESPONSIBILITIES.** City agrees that it shall be responsible for the following:

- a. City agrees to and shall provide the Venue (Coachman Park and surrounding areas) to Partner for Event. Venue shall be in order and ready to be set up for Event on March 2, 2019 at least 3 days prior to the Event.
- b. City agrees to and shall be responsible for organizing and coordinating event fencing through City's pre-approved vendor(s), police, security, and paramedic/EMT services at Event.
- c. City shall be available to help Partner in facilitating onsite logistics and for ensuring that all backline, sound, stage, roof, and lighting meets or exceeds any and all City and State requirements, including safety and wind requirements set forth by the City; that such services are adequately insured and that any and all work to set up and maintain such will be performed to the highest safety standards possible in order to minimize accidents and injuries.
- d. City shall be solely responsible for payments to BMI, ASCAP, SESAC and GMR.
- e. Per Partner's written request for, and fee approval of, City agrees to and shall provide 4 dressing trailer(s), 1 production trailer(s), 3 dumpsters, a proportionate number of portable toilets and hold tanks, parking attendants, plumbers, electricians, two-way radio, barricades, volunteer groups, and any and all licenses for the Event. Partner shall be responsible for such costs at settlement, excluding any and all items relating to liquor permits, licensing, and concessions at the Event.
- f. City shall coordinate, as requested, with its exclusive ticketing vendor to provide for ticketing operations, including advance purchase and onsite sales.
- g. City shall be solely and exclusively responsible for selling, pouring, and serving alcoholic beverages at Event, including but not limited to the following: (1) secure, at City's expense, any and all necessary state or local licenses/permits required to serve alcoholic beverages at Event, (2) comply with any local or state regulations and insurance requirements in connection with the provisions of alcoholic beverages at Event, (3) provide appropriate staffing for the provision of said services for Event, (4) process age identification for all persons attempting to purchase alcoholic beverages at Event, and (5) provide General Liability Insurance, including Liquor Liability coverage, in no less than \$2,000,000 per occurrence/\$3,000,000 aggregate. City agrees to and shall comply at all times with all applicable federal, state and local laws and regulations, including but not limited to all regulations of the Florida Division of Alcoholic Beverages and Tobacco, in connection with Event.

- h. City shall have the right to sell food and beverage concession booths at Event and concessions; however, City shall not be obligated to secure any such booths and concessions for Event. City shall retain all gross revenues from the sale of such food and beverage concession booths and concessions.

4. **ADDITIONAL CONDITIONS.**

- a. It is understood that Partner and the City will co-promote the Event. It is understood that Partner is the owner/producer/presenting sponsor of the Event and the Event, in Partner's sole discretion, may be a paid event to the public.
- b. It is understood by Parties that the City has a sound policy for concerts to which Partner and Artists contracted by Partner must adhere. The law or policy set forth by City officials mandates that the decibel level remain at or below 96db at all times for Event at Venue and a measuring device must be present at the Front-of-House sound booth to monitor the levels. There is also a hard curfew of 11pm on Saturday, March 2, 2019.
- c. It is understood that City officials have established safe capacity limits for the Venue for the Event. The Clearwater Fire Marshall's office will set the maximum capacity after reviewing the site plan. Typically for events at Coachman Park capacity has averaged 12,500 - 13,500. Capacity will apply to all advance purchase and onsite tickets sold through the ticketing vendor, to credentials distributed, and to vendors/staff in the Venue, as well as volunteers, staff, etc. that occupy the Venue.
- d. It is understood that the City has established guidelines for Temporary Event Structures (TES). Parties and their vendors, if applicable, will comply with any and all TES guidelines, as provided by the City.
- e. The City requires partner to keep them informed of potential artists that are anticipated to be booked to perform at Event. Artists may be researched for any major security/safety concerns that have been encountered at previous concerts held in similar venues. City retains the right under its Special Event Permit process to prevent or discontinue artists or activities which may compromise the public's safety, as determined in the reasonable discretion of the City.
- f. Parties understand that neither Partner nor City will permit its staff, representatives or agents, including DJ's, to encourage the audience to commit illegal or dangerous acts from the stage.

5. **FEES/REVENUES.** The parties agree to the following:

- a. City shall remit to Partner at settlement 100% of the net ticket sales from Event. Settlement shall take place within 21 days from receipt of check from ticket vendor. Net ticket sales from Event shall mean gross ticket revenue received by the ticketing vendor less:
  - (i) A fee of \$2.50 per ticket (Early Bird) and \$4.75 per ticket (Regular Price) that ticketing vendor shall retain; and
  - (ii) A fee of \$25,000.00 that the City is charging Partner for services rendered hereunder, and
  - (iii) Any reimbursable costs/expenses incurred by City as set forth in Agreement.

- b. Partner shall retain 100% of gross third-party sponsorship and vendor revenues Partner has sold in association with Event.
  - c. City shall retain 100% of the gross revenues from food and beverage concession booths City has sold in association with Event and retain 100% of the gross revenues from concessions City has sold in association with Event.
6. **INTELLECTUAL PROPERTY.** Parties understand and agree that the other party has no right, license, title, interest and property to use any names, designs, illustrations, logos, seals and trademarks of the other party except as set forth in this Agreement. Each Party hereby grants to the other party the right to use such Party's names, designs, illustrations, logos and trademarks in connection with the promotion of Event; provided that each Party shall be bound by any restrictions imposed upon them in writing by the granting Party with respect thereto. The Parties acknowledge and agree that the "WiLD Splash" event name, design, illustration, logo, and trademark shall be sole and exclusive property of Beasley and that no rights in or to any such event name, design, illustration, logo, and trademark shall vest in or to the other party.
7. **RELATIONSHIP OF THE PARTIES.** This Agreement does not create a partnership or joint venture of the Parties, nor does it make either Party the agent or representative of the other. Neither Party has the authority to bind the other party or to incur any liability on behalf of the other party, nor to direct employees or volunteers of the other party.
8. **REPRESENTATIONS AND WARRANTIES.** Each Party hereto represents, warrants, and covenants to the other party:
- a. It has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms and conditions hereof; and
  - b. The execution, delivery and performance of this Agreement does not and will not violate or cause a breach of any other agreements or obligations to which it is a party or by which it is bound, and
  - c. Both Partner and City are prohibited from using or allowing others in its employ or control, including but not limited to its employees, agents, representatives, artists, vendors, subcontractors, or volunteers (which for the purpose of this Agreement shall all be included in the terms "City" and "Partner"), to use any Incendiary Devices in the Venue or as part of Event without the prior written approval of the following:
    - (i) City (which may be granted or denied at City's sole discretion);
    - (ii) Clearwater Fire and Rescue ("CFR") or other local fire department or fire agency having jurisdiction over the Venue, and
    - (iii) Any other governmental agency having jurisdiction over such activities.

For the purpose of this Agreement, the term "Incendiary Devices" shall include, but not be limited to, any type of pyrotechnics, fireworks, open flames, lasers, "sparklers," "balls of flame," "flash pots," "gerbs," or "gerb fans."

In the event City, CFR, or any other governmental agency gives their written approval, Partner shall contract with City's pre-approved fireworks vendor for any and all Incendiary Device use or other pyrotechnics display.

9. **INSURANCE.** Both City and Partner each understand and shall, at their own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term of this Agreement, sufficient self-insurance or purchased insurance to adequately protect the respective interest of the parties. Purchased insurance shall be obtained with a carrier having an AM Best Rating of A-VII or better.

Specifically, Parties must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum four (4) year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$2,000,000 (two million dollars) per occurrence and \$3,000,000 (three million dollars) general aggregate. In addition, as part of its Commercial General Liability Insurance, the City agrees to maintain Liquor Liability Insurance in no less than the same limits as required for the Commercial General Liability Insurance.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$2,000,000 (two million dollars) combined single limit.
- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable.
- d. If the Parties are using their own property in connection with the performance of their obligations under this Agreement, then **Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is recommended.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

**Other Insurance Provisions.**

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, City will provide Partner with a Letter of Self-Insurance signed by City's Risk Manager. Said letter will outline the limits of City's self-insurance and excess insurance. Said letter does not guarantee or convey any rights to Partner, nor does it waive City's rights under Florida Statute 768.28 and to any sovereign immunity. In addition, when requested in writing from Partner, City will provide Partner with certified copies of all applicable excess policies. The address where such letter and certified policies shall be sent or delivered is as follows:

Beasley Media Group, LLC, owner and operator of WLLD(FM)  
9721 Executive Center Drive N, Suite 200  
St. Petersburg, FL 33702

- b. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, Partner will furnish City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured." In addition, when requested in writing from City, Partner will provide City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

City of Clearwater  
Attn: Parks & Recreation Dept. Special Events  
P.O. Box 4748  
Clearwater, FL 33758-4748

- c. Both Parties agree and shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- d. Both Parties agree their insurance as outlined above shall be primary and non-contributory coverage for their negligence.
- e. Both Parties reserves the right to appoint legal counsel to provide for their defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Party's design, equipment, or service. Both Parties agree that the Other Party shall not be liable to reimburse them for any legal fees or costs as a result of Parties providing their defense as contemplated herein.

**The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the Other Party, and failure to request evidence of this insurance by either Party shall not be construed as a waiver of either Party's obligation to provide the insurance coverage specified.**

10. **INDEMNIFICATION/LIABILITY.** Each of Partner and City ("Indemnifying Party") shall indemnify, defend, and hold harmless the other party, its governing body, affiliates and their respective officers, directors, employees, agents and representatives and the successors and assigns of any of them ("Indemnified Party"), from and against all claims only to the extent that they are found to result from the sole negligence of the Indemnifying Party, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third-party agents of the Indemnifying Party. This indemnification shall not be construed as a waiver of the City's sovereign immunity and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the City must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII, section 10 of the Florida Constitution, the value of this indemnification is only to the extent of the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the Indemnified party against the Indemnifying Party to only those damages caused by Indemnifying Party's sole negligence, and specifically not including any attorney's fees or costs associated therewith. The foregoing indemnities shall survive the termination of this Agreement.
11. **BROADCAST OF RADIO AND TELEVISION SPOTS.** If Partner is associated with broadcasting or using broadcasting to promote Event, Partner shall have the right to decline the use of any broadcasting spot provided or approved by City, without liability, if such broadcasting spot does not conform to Partner's standards and practices as uniformly applied. Partner's obligations to broadcast

spots may be preempted and relieved for any event, force majeure, or for the broadcast of any program, which Partner deems, in its sole discretion, to be a program of special national, state or local significance and/or importance to the public interest. Any such preemption shall not constitute a breach of this Agreement. Except as otherwise provided herein, the broadcast of any spot advertising hereunder shall be governed by the terms and conditions of Partner's standard terms and conditions for advertising.

12. **NONDISCRIMINATION STATEMENT.** Partner understands and agrees that it will not discriminate in advertising contracts on the basis of race or ethnicity, and will not accept any advertising which is intended to discriminate on the basis of race or ethnicity. City represents and warrants that it is not purchasing time from Partner, or Partner's affiliates, that is intended to discriminate on the basis of race or ethnicity.
13. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and signed copies may be delivered by facsimile or e-mail, in which event, each of which shall be deemed original, and all of which together will constitute one and the same instrument.
14. **FORCE MAJEURE.** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The Party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the Other Party of all pertinent facts and identify the force majeure event. The Party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
15. **ARTISTS.** The City agrees that Partner shall not be liable if (a) an artist scheduled to perform at the Event does not perform as scheduled, or (b) Partner is unable to secure the performance of a particular artist for Event. Such artist non-performance, as set forth in this paragraph, shall not relieve Parties of their obligations hereunder.
16. **UNIQUE PROVISIONS/CONDITIONS.** See Attachment "A" for provisions or conditions unique to this Event.
17. **ENTIRE AGREEMENT; CHOICE OF LAW; SEVERABILITY.** This Agreement constitutes the entire Agreement between the parties and shall supersede any and all other agreements, whether oral or otherwise, between the parties. Any amendment or modification of this Agreement must be in writing and signed by authorized representative of both parties. The Agreement will be governed by and construed according to the laws of the State of Florida and the parties hereby consent to the exclusive jurisdiction of Pinellas County and the Middle District of Florida, Tampa. If any item or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

Beasley Media Group, LLC

  
Caroline Beasley, CEO

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
George N. Cretekos  
Mayor

\_\_\_\_\_  
William B. Horne, II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Owen Kohler  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

**Attachment "A"**  
**ADDENDUM TO WILD SPLASH 2019 EVENT AGREEMENT BY AND BETWEEN**  
**BEASLEY MEDIA GROUP, LLC AND THE CITY OF CLEARWATER**

- I. Any staff/DJ/sponsor associated with Beasley or the City of Clearwater with access to the Public Address system will not encourage any member of the audience to commit any illegal acts from the stage or encourage any behavior that could endanger the safety of those in the audience or those working at the Event.
- II. As a "Paid Ticket" Event, the City as a Co-Promoter will have the ability to utilize the City's "ETIX" account for the sale of tickets to the Event. The net ticket revenue from the sales of the tickets shall belong to Beasley. The City upon receipt of the final settlement check (minus taxes and fees) will deposit the check into the Special Events development account until such a time that all deductions that are outlined in this Agreement are finalized and a final Event settlement is agreed upon, whereupon all payments will be made final.
- III. As partners in this Event, Beasley will share a list of all sponsors and sponsorship opportunities prior to the Event. All vendors/exhibitors/sponsors must receive a credential and be able to provide identification for themselves that match a list Beasley will create for whom shall be allowed to enter the Event.
- IV. For enhanced security at the City's events, the use of metal detection devices will be present at all ingress/egress areas throughout the Venue. Beasley's staff and all of its associates understand and agree to this security measure. Furthermore, Beasley agrees to post on its social media pages and websites and include in its marketing announcements of the Venue rules/regulations in relation to public safety and the enhanced security measures.
- V. Beasley will reimburse as part of the Event settlement all rented equipment or services that are requested by Beasley for sponsors, staff, vendors, or any associates of the Event that are paid for directly by the City as mutually agreed upon. The City will follow all City purchasing guidelines to ensure that all of the vendors have provided all the proper insurance credentials and offer the City and Beasley the best product and protection for the investment.
- VI. The City is not responsible for acts of negligence performed by Partner or any artists, vendors, sponsors, or anyone associated with Partner at the Event.
- VII. The City and Partner shall obey all federal, state, and local laws rules and regulations in connection with the operation of the Event and the Event Venue.

**PARTNER:** Initials CB Date \_\_\_\_\_ **CITY:** Initials \_\_\_\_\_ Date \_\_\_\_\_