

CITY OF ORLANDO, FLORIDA
4TH OF JULY CELEBRATION- FIREWORKS AT THE FOUNTAIN
SPECIAL EVENT AGREEMENT

THIS Orlando 4th OF JULY SPECIAL EVENTS AGREEMENT ("Agreement") is made and entered into as of the ____ day of ____, by and between the **CITY OF ORLANDO**, a Florida Municipal Corporation, and **COX Media Group** ("Contractor").

WITNESSETH:

WHEREAS, City of Orlando desires to hold a 4th of July special event for the benefit of the public for purposes of celebrating Independence day on July 4, 2016, July 4, 2017 and July 4, 2018 at Lake Eola Park, which is located in and owned by the City of Orlando; and

WHEREAS, Contractor desires to contract with City to provide Special Event development, creative design, and assistance with the production support for the Special Event, as provided in this Agreement; and

WHEREAS, Contractor represents and warrants to City that it has the personnel, tools, materials, and experience to provide the services as provided herein.

NOW THEREFORE, in consideration of the provisions contained in this Agreement, and other good and valuable consideration in which the parties acknowledge has been received, the parties agree as follows:

- 1.0 **Incorporation of Recitals:** The foregoing recitals are true and correct and by this reference are fully incorporated into this Agreement.
- 2.0 **General Provisions:**
 - 2.1 **Definitions.**
 - a. "Agreement" or "Contract" shall mean this Agreement between City and Contractor regarding the Special Event services stated herein.
 - b. "Advertise" shall mean the act of publicly announcing or calling attention to the Special Event and shall include, but not be limited to, the distribution of handbills or mass mailings, the use of outdoor advertising and announcements by billboard, poster, radio, television, newspapers, and digital advertising channels.
 - c. "City of Orlando" shall mean the City of Orlando, and its designees.
 - d. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall

go into effect. The Agreement shall not be effective against any party until said date.

- e. "Public Records" are as described in Section 119.011(1), Florida Statutes.
- f. "City" shall mean the City of Orlando, a Florida Municipal Corporation and its employees, agents, and contractors.
- g. "Contractor" shall mean Cox Media Group, a Florida Corporation and its employees, agents, and contractors.
- h. "Special Event" shall mean the outdoor 4th of July special event approved by City and held at Lake Eola Park July 4, 2016, 2017, 2018.
- i. "Lake Eola Park" shall mean the park by that name owned and operated by the City, which is located within the City of Orlando.

2.2 **Engagement.** City hereby engages Contractor and Contractor agrees to perform the services outlined in this Agreement, as the sole radio/events sponsor of the City's 4th of July Special Event, as provided herein. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement.

3.0 **Scope of Services.** City and Contractor agrees to perform the following services:

- 3.1 **Fireworks.** City of Orlando shall provide a complete fireworks production display during the Special Event produced by a qualified pyrotechnic fireworks company. A musical score shall accompany the fireworks display, and shall be approximately 15-20 minutes. Contractor and the fireworks producer shall cooperate closely to assure the precise coordination between the music and the fireworks display. Notwithstanding, no provision of this Agreement shall prevent the City from exercising its police powers to cancel the fireworks display, without penalty, in the event the City deems that conditions are unsafe.
- 3.2 **Special Event.** Contractor shall advertise, assist in production, assist in planning, promote, manage, and operate the Special Event in cooperation with the City. In furtherance, thereof, Contractor agrees to keep the City of Orlando fully informed of its plan to promote, manage, and operate the Special Event so that City can reasonably satisfy its obligations under the Agreement and reasonably address issues of public health, safety, and welfare related to the Special Event.
- 3.3 **Sponsorship & Concessions; Event Fees.** Unless otherwise provided in this Agreement, Contractor shall retain all sponsorships and concession rights fees paid for the Special Event. City will retain the ability to work with and receive sponsorships from non/not-for profit organizations, OUC, DDB, Fiesta in the Park Committee and other companies as agreed upon with COX Media Group.

The City may also form partnerships with organizations, excluding radio and digital companies, for in kind promotion of the event, with the approval of COX Media Group. Such approval shall not be unreasonably withheld. Any changes in Special Event rules regarding concession sales shall result in possible renegotiation of concession rights agreement between City and Contractor.

- 3.4 Staging; Other Production Materials.** City shall provide Lake Eola Bandshell and the use of current production materials necessary to produce a high quality Special Event including existing power and sound system. If additional equipment is necessary, the Contractor is responsible to secure the additional needs.
- 3.5 Professional Main Stage Entertainment.** Contractor shall provide a Professional, main stage act featuring mass appeal music agreed upon by both Contractor and the City. Contractor shall provide or obtain, at its expense, all music licenses necessary for any music or musical productions, which are part of the Special Event.
- 3.6 City Special Event Policy.** Contractor agrees to comply with the City's Special Event policies which are deemed applicable to the Special Event by the City of Orlando.
- 3.7 Permits.** City will provide all local, state, and federal governmental permits necessary to hold the Special Event.
- 3.8 Television partnership.** Contractor and City will work to secure a mutually agreed upon Television partner. Television partner will not have any rights to sponsorship at Special Event unless separate agreement is made directly with Contractor.
- 3.9 Radio Partnership.** Contractor will provide on air promotions on all six (6) COX Media Group stations, play prerecorded PSA's and conduct live on-air interviews leading up to the event. On event day, Contractor will also provide multiple stations on site promoting the event with promotions staff, air personalities, and giveaways.

4.0 Compensation; Expenses.

- 4.1 To Contractor.** Contractor's sole compensation for all services rendered by Contractor under this Agreement shall be derived from the sale of entertainment and sponsorships by Contractor to the public.
- 4.2 To City.** Contractor shall pay the City of Orlando \$40,000 for 2016, \$41,500 for 2017, and \$42,500 for 2018 on or before August 4 of each year.

- 4.3 **Contractor Expenses.** Unless otherwise provided in this Agreement, Contractor shall pay all costs and expenses necessary for Contractor to satisfy its obligations under this Agreement.
- 4.4 **City Expenses.** City shall provide the following services and facilities for the Special Event (1) Lake Eola Park on the day of Special Event and the preceding day for set-up purposes; (2) all necessary power needs around Lake Eola Park, including the bandshell (3) rest room facilities; (4) lighting of Lake Eola Park and surrounding areas; (5) City fire and police services as deemed reasonably necessary by the City (6) clean-up of Lake Eola Park and surrounding area; (7) parking areas and parking coordination; and (8) repair of damage incurred to Lake Eola Park caused by unforeseen weather conditions; (9) extra security as deemed necessary by City; (10) trash receptacles; and (11) barricades/street closures.
- 4.5 **Due Diligence.** Contractor acknowledges that it has investigated prior to the execution of this Agreement and satisfied itself as to the conditions affecting the services required hereunder, the availability of materials and labor, the cost thereof, the requirements to obtain necessary to complete the services within the time set forth herein. The Contractor warrants to the City that it has the competence and abilities to carefully, professionally, and faithfully complete the services in the manner and within the time limits proscribed herein. The Contractor will perform the services with due and reasonable diligence consistent with sound professional and labor practices.
- 5.0 **Time is of the Essence.** Time is of the essence of this Agreement.
- 5.1 **Non-Business.** In the event that any period of time as set forth in this Agreement expires or any date herein occurs on a Saturday, Sunday, holiday, or other non-business day, then such date shall automatically extend to 5:00 p.m. on the next subsequent business day, excluding the day the Special Event will be held pursuant to this Agreement.
- 5.2 **No Assignment.** This Agreement shall not be assigned or transferred.
- 5.3 **Third Party Rights.** Except for the express rights granted under this Agreement to the Orlando Utilities Commission, The Downtown Development Board, Fiesta in the Park Committee, and any of the City's chosen not for profit agencies, this Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any third parties. The City retains the ability to partner with and receive sponsorships from businesses and organizations for this event, excluding radio companies, with the approval of Contractor, and such approval shall not be unreasonably withheld.
- 5.4 **Further Assurances.** From and after the execution of this Agreement, each of the parties hereto shall fully cooperate with each other and perform any further act(s)

and execute and deliver any further documents, which may be necessary or desirable in order to carry out the purposes and intentions of this Agreement.

- 5.5 **Severability.** If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions shall nevertheless remain in full force and effect, unless the absence of the invalid, void, or unenforceable provision or provisions causes this Agreement to fail in its essential purposes.
- 5.6 **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. The parties further agree that in any dispute between them relating to this Agreement, exclusive jurisdiction shall be in the trial of courts located in Orange County, Florida, and any objections as to jurisdiction or venue in such courts being expressly waived.
- 5.7 **Attorney's Fees.** In the event any litigation or controversy arises out of or in connection with this Agreement between the parties hereto, the prevailing party in such litigation or controversy shall be entitled to recover from other party or parties all reasonable attorney's fees and paralegal fees, expenses and suit costs, including those associated with any appellate or post judgment collection proceedings.
- 5.8 **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- 5.9 **Notices.** Any notice, request, instruction, or other document to be given a part of this Agreement shall be in writing and shall be deemed given under the following circumstances: when delivered in person; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered, or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledge upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall have given written notice as provided herein):

To City of Orlando: C/o Michele Brennan
Office of Communications and
Neighborhood Relations Director
400 South Orange Avenue
Orlando, Florida 32801
PH: (407) 246-3845
FAX: (407) 246-2584

To Contractor: Cox Radio, Inc.
Wes Halliwell Events Manager
Cox Media Group
4192 John Young Parkway

Orlando, Florida 32804
PH: (321) 281-2053
FAX: (321) 281-2086

- 5.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.
- 5.11 **Public Record.** It is hereby specifically agreed that any record, document, computerized information and program, audio or video tape, photograph, or other writing of the Contractor related, directly or indirectly, to this Agreement, shall be deemed to be a Public Record whether in the possession or control of the City or the Contractor. Said record, document, computerized information and program, audio or video tape, photograph, or other writing of the Contractor is subject to the provisions of Chapter 119, *Florida Statutes*, and may not be destroyed without the specific written approval of the City. Upon request by the City, the Contractor shall promptly supply copies of said public records to the City. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during the normal pool servicing hour of the Contractor be open and freely exhibited to the City for the purpose of examination and/or audit.
- 5.12 **Interpretation.** Both the City and the Contractor have participated in the drafting of all parts of this Agreement. As a result, it is the intent of the parties that no portion of this Agreement shall be interpreted more harshly against either of the parties as the drafter.
- 5.13 **Independent Contractor.** Contractor shall be considered an independent contractor under this Agreement.
- 6.0 **Entire Agreement.** This Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or Agreements, either oral or written, and all such matters shall be deemed merged into this Agreement.
- 7.0 **Sovereign Immunity.** Nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity or other limitations imposed on the City's potential liability under state or federal law.
- 8.0 **General Liability Insurance.** For all services it performs or subcontracts hereunder, the Contractor shall purchase and maintain, at its own expense, such general liability insurance and automobile liability insurance to cover claims for damages because of bodily injury or death of any person or property damage arising in any way out of the services performed by Contractor under this Agreement. The insurance shall have minimum limits of coverage of \$1,000,000.00 per occurrence and shall list the City of Orlando as an additional insured. This shall include, but not be limited to, automobile liability of owned

vehicles, hired and non-owned vehicles, and employee non-ownership. All insurance coverage shall be with licensed by the State of Florida to engage in the business of writing insurance. Contractor shall require the same insurance requirements of any subcontractors which it engages to perform work under this agreement, including but not limited to, engagement of the fireworks/pyrotechnics contractor(s).

- 9.0 **Indemnification and Hold Harmless.** For all services performed pursuant to this Agreement, the Contractor agrees to the fullest extent permitted by law, to indemnify and hold harmless the City and its elected officials, employees, officers, and attorneys, from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability (including reasonable attorney's fees through any and all administrative, trial, post-judgment and appellate proceedings), directly or indirectly arising from the negligent acts, errors, omissions, intentional or otherwise, arising out of or resulting from Contractor's: (1) services which are the sole responsibility of Contractor even if such responsibility has been subcontracted for by Contractor; (2) performance of services pursuant to this Agreement; (3) failure to properly train employees under Contractor's control or direction; (4) failure to remit any local, state, and federal taxes due by Contractor as a result of the Special Event; and (5) failure to properly plan, promote, manage, and operate the Special Event. The indemnification provided above shall obligate the Contractor to defend at its own expense or to provide for such defense, at the sole option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against City or its employees, officers, and attorneys which may result from the services under this Agreement whether the services be performed by the Contractor or anyone directly or indirectly employed or hired by them. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are reasonable.
- 10.0 **Standard of Care.** In performing its services hereunder, the Contractor shall use that degree of care and skill ordinarily exercised, under similar circumstances by reputable members of its profession practicing in the same or similar locality.
- 11.0 **Termination.** The Contractor shall not terminate this Agreement without the expressed written consent of the City. In the event the City decides to terminate the agreement for this specific event, Contractor will receive a written notice a minimum of 180 days prior to the commencement of that year's event. If the 180-day notice is given, Contractor shall have no recourse against City for damages related to termination of that agreement.
- 12.0 **Term.** The Term of this Agreement shall be from the effective date until the full completion and satisfaction of the terms and conditions of this Agreement by both parties and the termination of this Agreement pursuant to paragraph 11.0. Except that the indemnification provision contained in paragraph 9.0 shall remain in full

force and effect for any claims, losses, damages, personal injuries, or liability, which may occur under this Agreement.

13.0 **Contractor's Signatory.** The undersigned person executing this Agreement on behalf of Contractor hereby represents and warrants that he/she has the full authority to sign said agreement for Contractor and to fully bind Contractor to the terms and conditions set forth in this Agreement.

14.0 **First Right of Refusal.** Provided Contractor has fully performed its responsibilities under this Agreement with the City, the City agrees that Contractor shall have the right to be the first party to negotiate with the City for the 2019 event. Said right shall automatically expire on September 30, 2018. This paragraph shall not be construed in any way as prohibiting the City from contracting with any other party for the aforementioned contract if the City and Cox Media Group are unable to negotiate a mutually satisfactory agreement for the 2019 July 4th Event.

IN WITNESS WHEREOF, the parties hereto have executed this 4TH of July Celebration-Fireworks at the Fountain Special Event Agreement on the day and year written above.

CITY OF ORLANDO, FLORIDA:

By: _____
Mayor/Mayor Pro Tem

DATE: _____

ATTEST: _____

DATE: _____

APPROVED AS TO FORM for the use and reliance of the City of Orlando, Florida, only

City Attorney
Orlando, Florida

CONTRACTOR:

By: _____

DATE: _____

Wes Halliwell, Events Manager

CC: Michele Brennan, Office of Communications and Neighborhood Relations Director,
City of Orlando