

① 4/28/15 ⊙

**DOCUMENT ROUTING FORM**

NAME OF DOCUMENT: Motion approving a second extension of an agreement with TMF2013, LLC for a two-day music event on Fort Lauderdale Beach, April 11 – 12, 2015

10/7/14 - CM-17

Routing Origin:  CAO      Also attached:  copy of CAM       Original Documents

1) **City Attorney's Office:** Approved as to Form 1 Original and Delivered to City Manager on April 15, 2015.

COLE J. COPERTINO, ASSISTANT CITY ATTORNEY CJC

CIP FUNDED  YES  NO  
Capital Investment / Community Improvement Projects

**Capital Investment / Community Improvement Projects** defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

2) **City Manager:** Please sign as indicated and forward \_\_\_ original to Mayor.

3) **Mayor:** Please sign as indicated and forward \_\_\_ original to Clerk for attestation and City seal.

**INSTRUCTIONS TO CLERK'S OFFICE**

4) **City Clerk:** Retains 1 original and returns 1 copy to Carolyn Bean, Parks & Rec

4/23

FIRST AMENDED AND RESTATED AGREEMENT

THIS IS A FIRST AMENDED AND RESTATED AGREEMENT, entered into on September 17, 2013, between:

THE CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "City"

and

TMF2013, LLC, a Tennessee limited liability company authorized to do business in the State of Florida, hereinafter referred to as "Applicant."

WHEREAS, subject to the terms hereof, Applicant has requested approval from the City to conduct the Rock the Ocean Presents the Tortuga Music Festival, or other title as agreed to by the parties herein, which includes a two day beachfront music festival featuring multiple artists, in order to call attention to and raise funds to benefit the world's oceans, including, without limitation, entertainment, film screenings, exhibits, souvenir sales and concessions collectively hereinafter referred to as the "Event." In accordance with the terms hereof, Applicant shall provide the required certificates of insurance and indemnify and hold harmless the City of Fort Lauderdale for any damage to persons or property that occurs as a sole and direct result of the actions or inactions of Applicant in connection with and/or as a result of the operation of said Event; and

WHEREAS, City has been advised that, due to the scope and magnitude of the proposed Event, Applicant desires a contract with City for a period of time so that Applicant can appropriately plan the commitment of resources, sponsors, subcontractors and finances; and

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to i) entertain extensions to this Agreement beyond the initial term, and ii) agrees that during the term of this Agreement, or during any such extended term, the City will not enter into an Agreement, or approve an event permit, for another event, not produced by the Applicant, which is substantially similar in size, scope, magnitude and character to the Event as it relates to raising funds to benefit the world's oceans;

WHEREAS, on August 21, 2012, the City Commission approved an Agreement with Rock the Ocean Productions, LLC for this Event;

WHEREAS, TMF2013, LLC is a successor entity to Rock the Ocean Productions, LLC; and

WHEREAS, the managing member of TMF2013, LLC is the same principal who was the managing member of Rock the Ocean Productions, LLC and therefore there will not be a substantial change to the principal organizers of the Event; and

WHEREAS, on February 5, 2013, the City received a request on behalf of Rock the Ocean Productions, LLC to terminate the existing Agreement and to concurrently enter into a new Agreement with TMF2013, LLC; and

WHEREAS, pursuant to City's Code of Ordinances, in order to conduct such Event, Applicant and City wish to enter into this Agreement; and

WHEREAS, on February 19, 2013, the City Commission by motion terminated the Agreement with Rock the Ocean Productions, LLC and authorized the proper City officials to execute this Agreement with TMF2013, LLC, subject to the following terms and conditions; and

WHEREAS, on June 28, 2013, the City was notified by the Applicant of its desire to extend the agreement for an additional year; and

WHEREAS, on September 17, 2013, the City Commission by motion authorized the proper City officials to execute this First Amended and Restated Agreement with TMF2013, LLC for the 2014 Rock the Ocean Presents the Tortuga Music Festival;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. RECITALS AND EXHIBITS INCORPORATED. The foregoing recitals are true and correct as are the Exhibits attached hereto and incorporated herein by this reference.
2. DEFINITIONS. For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:
  - a. "Agreement" means this Agreement between the City and Applicant, including all of the attached and/or referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
  - b. "Applicant" means TMF2013, LLC, a Tennessee entity authorized to do business in the State of Florida.

c. "City" means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.

d. "Contract Administrators" means the City of Fort Lauderdale's City Manager for the City or his/her designee and the Manager of TMF2013, LLC or his/her designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. The Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City and Applicant.

e. "City Manager" means the City of Fort Lauderdale's City Manager or his or her designee.

f. "Event Impact Areas" means the areas outside the Event Site that are directly impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined by the City in consultation with Applicant and may change over time as the attendance at the event or the use of mass transit service changes. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager's decision shall be final as to the determined Event Impact Areas.

g. "Event Period" means the time periods as follows and as more fully described in Exhibit "A":

Set Up: Wednesday, April 2, 2014 through Friday, April 11, 2014 from 8 a.m. to 9 p.m.; Saturday, April 12, 2014 from 8 a.m. to 11 a.m.;

Event: Saturday, April 12, 2014 from 11 a.m. to 10:30 p.m. and on Sunday, April 13, 2014 from 11 a.m. to 10:30 p.m.; concert music will end by 10 p.m. and "Breakdown" will end by 10:30 p.m. on each day of the Event; and

Tear Down of Event: Monday, April 14, 2014 through Thursday, April 17, 2014 from 8 a.m. to 9 p.m.

The term "Breakdown" shall mean the use of heavy equipment, machinery or vehicles which use backup alarms in the deconstruction of the event structures in a manner that may produce noise or otherwise disturb area residents. The term Breakdown shall not include the cleanup or wind-down of event operations in a manner that does not involve heavy equipment and machinery. The Event Period may be revised upon the mutual consent of the City Manager and the Applicant.

h. "Event Site" means collectively the area on the barrier island used to hold

the Event from the Sheraton Fort Lauderdale Beach extending north to SE 5<sup>th</sup> Street and A1A to the Atlantic Ocean, as more specifically described in Exhibit "B."

i. "Maintenance of Traffic Plan" shall have the meaning given to such term in Section 5 of the Agreement.

j. "Public Safety Plan" shall have the meaning given to such term in Section 5.

k. "Repair" shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Event Site, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties, including licensees or invitees of the Applicant, related to the Event. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors or subcontractors.

l. "Site Plan" shall have the meaning given to such term in Section 7.

m. "Term" shall have the meaning given to such term in Section 4.

3. PERMISSION TO USE. Subject to the terms hereof, Applicant is hereby authorized and entitled to use the Event Site during the Event Period in order to conduct the Event. The actual extent of the area to be used shall be limited by the water line and the Maintenance of Traffic ("MOT") Plan and the approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site as allowed by law. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Other City properties, if appropriate and mutually agreed upon in writing by the City and Applicant, may also be used for the Event. Upon request, the City Manager or his designee shall have the right to approve or deny the use of promotional materials and advertising for the Event, which approval shall not be unreasonably withheld. If, upon review, the City Manager or designee denies the use of certain promotional materials, the City shall identify with specificity the basis for such denial and the Applicant shall use best efforts to remove the specifically restricted materials from future publication. All alcohol sales during the Event shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

4. TERM:

a. The Term of this Agreement shall commence upon execution of this Agreement and expire one year from the effective date. In the first year, the Event will occur on April 13 and 14, 2013. Applicant agrees that the final concert performance will end by 10:00 p.m. on each day of the Event.

b. Applicant and the City may mutually agree to extend the Term of this Agreement for three (3) consecutive one (1) year renewal terms, provided that both parties mutually agree it is in their best interest to do so. If the Applicant seeks to extend the Term of this Agreement for an additional one (1) year period, the Applicant shall submit a written request for extension at least sixty (60) days prior to the expiration of the Agreement. It is the intent of the parties to make a good faith effort to enter into a long-term relationship taking into account the investment and relationship of the parties. The City may approve or deny the Applicant's request for extension and shall notify the Applicant in writing of such approval or denial within thirty (30) days of the request for extension. In the event Applicant fails to put on the Event, City reserves the right to terminate said Agreement as provided herein.

c. If the City approves the request to extend the term of this Agreement, the terms of such extension shall be documented in an amendment to this Agreement, subject to approval by both parties, and no additional Special Event Permit shall be required.

5. PUBLIC SAFETY PLAN FOR THE EVENT. Because of the physical size of the Event and the number of people that may attend, City shall arrange for all necessary personnel to provide public safety at the Event Site and Event Impact Areas. The parties will consult with each other in regard to the levels of security including the scaling down of such services for the set up and tear down of the Event. City reserves the right to require, in good faith, that additional services be provided, at the sole cost to Applicant, to ensure the appropriate level of public safety. These services shall include, without limitation, crowd control, traffic management, fire rescue, ocean rescue, emergency medical services, and police services. Applicant is required to provide signage, traffic barricades, and cones to facilitate public safety and will set up and remove at no cost to the City.

a. The Applicant shall provide a Public Safety Plan to City no later than ninety (90) days prior to the date of the Event, and the Public Safety Plan shall be incorporated into this Agreement and marked as Exhibit "C". This plan shall include, but not be limited to, the Applicant's planned actions to respond to and mitigate various potential criminal and/or emergency incidents which may occur during the Event. After receiving the final private security and Event Public Safety Plan from the Applicant, the City shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. City shall develop an anticipated budget for the Public Safety Plan and other City services, and provide the anticipated budget to the Applicant not more than twenty-one (21) days following receipt of the Public Safety Plan. In the event of a disagreement between Applicant and the City regarding the number of personnel required for the Public Safety Plan and the anticipated budget of the Public Safety Plan, the City Manager shall seek to resolve such disagreement by taking into account the best interest of the public's safety and the reasonable cost for implementing the Public Safety Plan. The City Manager's decision shall be final as to the appropriate level

of staffing for the Public Safety Plan and the anticipated budget for the Public Safety Plan. City agrees to include in its anticipated budget to the Applicant the number of proposed on-site City personnel that will be assigned during the Event as allowed by Florida Statute.

The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event. Both parties agree that an essential element of the Event Public Safety Plan includes a procedure, mutually agreed upon in advance, the Applicant must follow during the Event to record the number of participants within the Event Site at any given time. Participant numbers must be real time and verifiable by City public safety personnel. In the event the primary participant count process fails during the Event, the Applicant must have a contingency process in place and readily available for activation to assure accurate continuation of participant counts. This contingency procedure along with the initial participant verification procedure shall be included and approved by the City in advance and as part of the Public Safety Plan. The Contract Administrator or City police/fire personnel shall have the right to request participant numbers from the Applicant at any time throughout the course of the Event.

b. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors, to include nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These plans will be fluid up until the conclusion of the event and may change based on real time intelligence, threat information, and other such inputs. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), Navy Criminal Investigative Service (NCIS), and other public safety partners will assist in determining the level and magnitude rating of this event, advise of any potential national security considerations, and provide intelligence gathering and event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials and Police/Fire personnel only and shall not be available for public or media distribution.

c. Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City a MOT Plan, incorporated into this Agreement and marked as Exhibit "D," containing a construction and automotive and pedestrian traffic flow schedule detailing the opening and closing times for all streets, lanes, pedestrian walkways and/or traffic corridors and outlining the use of any and all variable message signs for the City's review and approval. No additional street, lane or traffic corridor closures will be permitted unless included in the MOT Plan and approved by the City. Applicant agrees to provide the City with emergency access to all areas included in the Event Site to ensure the safety and welfare of

the community.

d. The cost for any additional services or expansion of services requested by Applicant, in writing, shall be an expense to Applicant and City shall be paid for all costs and expenses in association with any such additional or expansion of services provided to Applicant. Expansion of services means enhancements of activities, any changes in the type of activities provided or changes in parameters of Event or the Event Site, caused by or requested by Applicant, including physical location and boundaries that result in an increase in the City's cost to provide all necessary services.

e. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 21, Reimbursement of Costs and Expenses.

f. In the event of an emergency or disaster during the Event, at the Event site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, it shall be the responsibility of the Applicant to reimburse the City's reasonable additional cost to respond to such emergency or disaster that the City would not have otherwise incurred had such Event not been taking place. This section shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane, lightning strike, tornado or any other such causes whatsoever beyond the control of the parties and unrelated to the Event.

g. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences during the course of the Event.

6. **STREET CLOSINGS:** City reserves the right to approve all street closings, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closings should be included with the MOT Plan that is submitted by Applicant. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.

7. **SITE PLAN:** Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City the following:

a. For the Event Site and Event Impact Areas, a detailed Site Plan for the Event showing locations that will be designated for Applicant's exclusive use, detailing the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, etc. and the boundary lines,



including those down to the waterline as allowed by law, of any fences, barriers etc. to be constructed at the Event Site, and the times when such borders, fences and/or facilities will be constructed, operated and dismantled. Such Site Plan shall be subject to the review and approval by the appropriate City departments, such approval not to be unreasonably withheld or delayed. Any additional changes made to the Site Plan by Applicant, after reviewed by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld or delayed. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, stages, etc. are in accordance with the City approved site plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as Exhibit "E."

b. A description of all activities and events to occur at the Event Site and Event Impact Areas including permissible activities and any maintenance of the waterline fence, barrier and/or borders during the Event.

c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.

d. Copies of all appropriate permits and licenses required by the City's Sustainable Development Department and Fire Department. These permits include, but are not limited to, permits necessary for tents, merchandise, food and beverage vendors and electrical connections.

8. NON-PUBLIC SAFETY SERVICES: City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's employees or contractors related to Event transportation, setup, storage, maintenance, Repair or replacement of property, cleanup and breakdown of Event Site including removal of barricades and safety cones.

9. MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS:

a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities as to meet the requirements established by the building and zoning department. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 21, Reimbursement of Cost and Expenses.

b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Event Site or in the designated Event Impact Areas. All trash shall be collected and removed throughout the Event with final cleanup being completed within 24 hours of the Event completion, or within established time frames as agreed to by City. The requirement to remove trash and debris includes street sweeping. Applicant

will cover and reimburse City for all costs associated with trash and debris removal within the Event Site and Event Impact Areas.

c In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

10. **PARKING AND TRANSIT SERVICES:** It will be the responsibility of Applicant to arrange and coordinate all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City as part of the MOT Plan. City agrees to invoice Applicant at the approved special event parking rate of \$10 dollars on a non-event day and \$20 on the days of the Event to use the Fort Lauderdale Beach Park Parking Lot during the Event Period and any other public metered parking spaces that are removed from public use as requested by the Applicant and approved by the City. All parking lot requests must be in writing at least thirty (30) days in advance of the Event. An estimate of parking charges will be provided to Applicant no more than seven (7) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event.

11. **CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS:**

a. Applicant shall be allowed to construct and maintain on the Event Site, such facilities and structures that are necessary for the Event including, but not limited to, fences, barriers, grandstands and signs as approved by the City and at such locations as approved by the City.

b. All such structures, facilities, concession stands and canopies may be erected beginning on April 2, 2014 and deliveries related thereto can be made to the Event Site. All such structures must be removed within seventy-two (72) hours following the conclusion of the Event. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with the normal operations of the property. Applicant shall be permitted to erect canopies, tents, stages and/or concession stands to sell additional merchandise for the Event at City-approved locations. Any setup or tear down of such structures at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance No. C-08-37.

c. Applicant is hereby granted permission to erect canopies, tents, and concession stands, at such locations in accordance with the approved Site Plan. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned is conditioned upon



Applicant complying with the following:

- (1) Within ten (10) days of the Event Period, Applicant shall file with the City Manager a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate during the Event. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such concessions, tents or canopies at the Event Site.
- (2) Applicant shall obtain approval by the City Fire Department and file with its application evidence that such canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Sustainable Development Department must review and approve the proposed use of any temporary structure used in association with the Event in accordance with the standard criteria as outlined in the City's Code of Ordinances and Florida building code.

d. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Sustainable Development Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 21, Reimbursement of Costs and Expenses.

e. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

f. Applicant shall provide all day access passes to the necessary City staff required to work the Event. Applicant and City will agree to the list of passes that will be distributed for the Event at least ten (10) days prior to the Event. Additionally, Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. Location of this operations tent shall be determined by the City.

## 12. MAINTENANCE OF AND PAYMENT FOR DAMAGE TO PROPERTY.

a. No more than five (5) days prior to the Event, City and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk through inspection to point out to the City the areas of disrepair. At the conclusion of the Event, City and Applicant shall inspect the condition of the Event Site and Event Impact Areas and City shall inform Applicant of all necessary Repairs. Applicant

shall make all necessary Repairs to restore the Event Site and Event Impact Areas to a condition equal to that existing prior to the Event.

b. Applicant agrees to Repair all core drilling holes in the asphalt, concrete, and all other paved and unpaved surfaces, made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after the conclusion of the Event.

c. Applicant shall be responsible for damage to all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site or Event Impact Areas. Applicant shall be responsible for the costs to Repair any part of the Event Site or Event Impact areas that are damaged during the Event Period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', and agents' personal property, except for repairs of such property caused by the negligence or willful misconduct of the City or its officers, employees or agents.

d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees negligence during the Event Period, City shall furnish Applicant with a written report of such damage by the close of business on the Friday following the Event. The report shall estimate the cost to remedy such damage. Applicant arranges for such damages to be repaired by a third party, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

13. SECURITY OF APPLICANT'S PROPERTY. All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused by the wrongful or negligent acts of the City or its officers, employees or agents.

14. APPLICANT'S CONTRACTS: Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the Event shall be negotiated by Applicant and secured at the sole expense of Applicant. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event.

15. SUBLEASES, ASSIGNMENTS, OR TRANSFERS: Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations

and/or rights under this Agreement, in whole or in part, to any person, business or entity, without the prior written approval of City, such approval not to be unreasonably withheld or denied. Any such action by Applicant will result in immediate cancellation and termination of this Agreement by City.

16. LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS: Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Event Site including, without limitation, the City and obtaining an incidental take permit for the protection of sea turtles issued by the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City fifteen (15) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected material. Applicant shall ensure that all performance payments required to be made under such licenses are made promptly and directly to the licensing organizations. Copies of all said licenses or reports shall be submitted to City upon request. In the event Applicant fails to submit the licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.

17. STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES: Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event.

18. INSURANCE:

a. Applicant agrees to obtain, pay for and keep in force continuously during the time period from Midnight, the day before set-up for the event to Midnight of the day that breakdown of the event is completed, comprehensive general liability insurance, including products and completed operations, property damage, bodily injury and contractual liability with policy limits of not less than One Million Dollars (\$1,000,000.00) for any one occurrence, and Two Million Dollars (\$2,000,000.00) general aggregate and liquor liability insurance in the amount of One Million Dollars (\$1,000,000.00). Applicant is required to confirm that each vendor of the Applicant carry insurance coverages that meet or exceed the conditions in paragraph "d" below and that the same limits apply to any and

all vendors the Applicant uses for the Event. Applicant further confirms that Applicant's insurance will apply as excess over any other valid and collectible coverage of their vendors. Said limits may be provided by purchase of an umbrella or excess policy.

b. Applicant agrees to maintain automobile liability insurance with a combined single limit of not less than \$1,000,000, including coverage for owned, hired, borrowed and non-owned vehicles.

c. Applicant agrees to maintain Workers' Compensation Insurance, for the benefit of Applicant's employees, including employer's liability, with a limit of \$500,000, in compliance with all state and federal laws.

d. Applicant shall provide City with valid Certificates of Insurance no later than ten (10) days prior to the date of permission from City to first use the Event Site. Any such policies shall name the City as an additional insured and shall not be affected by any insurance that the City may carry in its own name. The policies shall remain in full force and effect during the Event and shall specifically include those times of setup and breakdown in connection with the Event. All required insurance will be placed with carriers licensed to do business in the State of Florida, having agents upon whom service of process may be made in the State of Florida, and must be rated no less than "A-" as to management, and no less than "Class X" as to financial strength, by the latest edition of Best's Key Rating Insurance Guide which holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund. All policies shall provide thirty (30) days written notice of expiration and/or cancellation to both parties. If Applicant fails to deliver an insurance certificate, the City's failure to request delivery shall in no way be construed as a waiver of Applicant's obligation to provide the insurance coverage specified herein.

19. INDEMNIFICATION AND HOLD HARMLESS: Except in cases of City, its agents, officers, and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and/or employees, against any and all damages, claims, losses, liabilities and expenses (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Event Site or caused by, in connection with, arising out of, or resulting from any act by Applicant, its partners, employees, officers and/or agents done in the performance of this Agreement. If called upon by City, Applicant shall defend not only itself, but also City in connection with any such claim at Applicant's expense, and at no expense whatsoever to City. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the event (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's negligence as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the

limitations contained in Section 768.28, Florida Statutes, as amended or revised.

20. COSTS AND EXPENSES FOR CITY SERVICES.

a. As provided for in Section 5 above, Applicant shall plan and provide for public safety. Applicant agrees to cover all out of pocket costs and expenses incurred by the City for services provided for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property, and staff time incurred as a result of the Event. Applicant agrees and understands that the off duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24 hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted. Applicant agrees that positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with this request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal or county code requirements. Applicant shall also be responsible for any replacement and restoration costs as set forth in Section 12, Maintenance of and Payment for Damage to Property.

b. Applicant agrees to secure a bond in an amount equal to one hundred and ten percent (110%) of the estimated cost of reimbursement for City services, to cover all costs and expenses associated with hosting the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred and ten percent (110%) of the cost of reimbursement for City services("Obligated Amount") in which case a bond would not be required by the City. The Obligated Amount shall be placed into the





City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions hereinafter set forth ("Escrow Deposit").

c. In the event the Applicant elects to deposit the Obligated Amount with the City of Fort Lauderdale Treasurer, who shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.

d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.

e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney's fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.

f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

21. REIMBURSEMENT OF COSTS AND EXPENSES:

a. Subject to the terms hereof, Applicant shall pay City for all costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of any invoice from City. If total amount is not paid within fourteen (14) days, interest charges of four percent (4%) annual percentage rate shall be applied.

b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may make a petition to the City Commission. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

22. AUTHORITY OF CITY MANAGER: Applicant shall coordinate the use of Event Site in accordance with the terms hereof and the approved Site Plan, in consultation with the City Manager. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or

ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Event Site any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right. The decision of the City Manager in such regard shall be final and binding.

23. **TERMINATION:** Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Event. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election one hundred and twenty (120) days prior to the date of the Event. Applicant shall be obligated to reimburse City for any out of pocket costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement. It is expressly understood that City may seek to terminate this Agreement if the City decides it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice Section of this Agreement, and the Applicant shall have 72 hours to cure the reason for the termination to the exclusive satisfaction of the City. In the event of an imminent threat to the public's health or safety, the City may terminate this Agreement at any time by providing notice as set forth in the Notice Section of this Agreement.

24. **BREACH:** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement, except that before such termination, the Applicant shall be entitled to thirty (30) days written notice and an opportunity to cure the breach within such period. Notice of any breach may be sent by facsimile followed by hand delivery of the notice as provided in Section 30, Notice, of this Agreement.

25. **FORCE MAJEURE:** In the event the Event Site shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within five hundred (500) miles of the Event Site, act of terrorism, war, act of God or other disaster or epidemic, (collectively or separately, "*Force Majeure Event*"), or the Event is cancelled or postponed due to a Force Majeure Event, then either party may terminate this Agreement by providing prior written notice to the other party. In such event, each party shall be responsible for their own costs and expenses incurred prior to such termination except if the Force Majeure Event occurs during the Event Period, whereas Applicant will reimburse City for all actual costs incurred related to the Event, as otherwise provided for hereunder.

26. **GOVERNING LAW:** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

27. AMENDMENT: No modification amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

28. WAIVER OF BREACH: Failure by City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

29. EXTENT OF AGREEMENT: This Agreement represents the entire and integrated Agreement between City and Applicant and supersedes all prior negotiations, representations or agreements either written or oral.

30. NOTICE: Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Attn: City Manager

With a copy to:

City of Fort Lauderdale  
City Attorney's Office  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

APPLICANT:

Rock the Ocean Productions, LLC  
54 Music Square East, Suite 350  
Nashville, TN 37203  
Attn: Chris Stacey, Manager of Rock the Ocean Productions, LLC

AND

TMF2013, LLC  
c/o HUKA Entertainment, LLC  
924 Valmont Street  
New Orleans, LA 70115  
Attn: AJ Niland and Jeff Kreinik

With a copy to:

Shutts & Bowen LLP  
200 East Broward Blvd., Suite 2100  
Fort Lauderdale, FL 33301  
Attn: Stephen Tilbrook

AND

Keller, Turner, Ruth, Andrews, Ghanem & Heller, PLLC  
700 12<sup>th</sup> Ave South, Suite 302  
Nashville, TN 37203  
Attention: Jaime Heller

31. **SEVERENCE:** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

32. **NON-DISCRIMINATION:** In the performance of this Agreement, Applicant shall not discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. In addition, to ensure that the Event is a true community event, Applicant will encourage the participation of minority groups in all aspects of the Event, including the organization, planning, implementation, concessions and support services. Applicant agrees to comply with the terms and provisions of the Americans With Disabilities Act and shall make the Event Site and Event Impact Areas accessible for persons with disabilities.

33. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access required by the City and its employees for the safety and welfare of the community and those attending the Event, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Event Site or Event Impact Areas which may be dangerous, Applicant will immediately correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property.

34. **MISCELLANEOUS PROVISIONS:**

a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the course of the Event. In addition, the Applicant will work with the City Public Affairs Division to disseminate traffic plan information to impacted residents and businesses in the Event Impact Areas, as well as schedule and facilitate a public meeting at a location near the Event Site to

communicate general event and traffic plan information to the public. The logistics and date/time of the meeting shall be approved by the City, with the meeting taking place at least 90 ninety days prior to the Event start date.

b. The use of fireworks shall comply with all applicable state laws and shall require a fireworks permit from the City fire department.

c. Applicant acknowledges that it is solely responsible for all utilities for the Event including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.

d. In the Event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement, City shall be entitled to its costs of collection, repairs, attorney's fees and costs and interest at the maximum rate allowable by law.

e. General admission rates for the Event shall be based upon market rates, with the range of ticket prices depending upon the artists. Applicant reserves the right to offer special admission and VIP packages for individuals and businesses at various price ranges.

f. Both parties agree that all revenues including, without limitation, concessions, ticketing, sponsorships and/or broadcast rights shall be retained by Applicant.

g. The City shall have no right to use the Festival Marks (as defined herein or as may be amended, added or revised at any time) for any purpose whatsoever without the prior written approval of Applicant in each instance. For the purposes of this Agreement, "Festival Marks" means the names, symbols, emblems, designs, and colors of the "Tortuga Rock The Ocean Festival" and its partners, including without limitation the terms "Guy Harvey" and the "Guy Harvey Foundation". The City acknowledges and agrees that as between the City and Applicant, all right, title and interest in and to the Festival Marks belongs to Applicant.

h. The Applicant shall be permitted to serve alcoholic beverages as a concession of the Event, and the Applicant may extend this right to permitted third parties, in accordance with all applicable licenses, regulatory requirements and the City of Fort Lauderdale Code of Ordinance.

i. The Applicant, after receiving permission by the City's Contract Administrator, reserves the right to add decor, including, but not limited to signage to the location or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.

j. The Applicant, after receiving permission by the City's Contract Administrator, may conduct filming anywhere at the Event site that is part of this License and shall retain all rights to such.

k. The Applicant will have a right to an independent audit of City's records to confirm the accuracy of the fees and expenses incurred by the City.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

**CITY**

CITY OF FORT LAUDERDALE, a  
municipal corporation of the State of  
Florida:

By   
JOHN P. "JACK" SEILER, Mayor

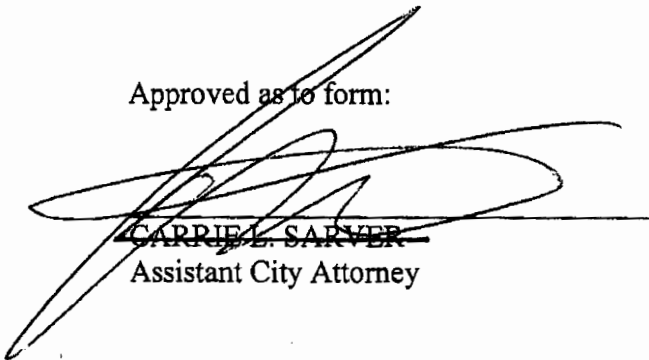
By   
LEE R. FELDMAN, City Manager

(SEAL)

**ATTEST**

By   
JONDA K. JOSEPH, City Clerk

Approved as to form:

  
~~CARRIE L. SARVER~~  
Assistant City Attorney



