

**FIRST AMENDMENT AND EXTENSION TO AGREEMENT
FOR TORTUGA MUSIC FESTIVAL**

THIS FIRST AMENDMENT AND EXTENSION to Agreement for Tortuga Music Festival ("First Amendment") is made this _____ day of _____, 2025, by and between the **City of Fort Lauderdale**, a Florida municipality ("City"), with its principal address located at 101 NE 3rd Avenue, Suite 2100, Fort Lauderdale, FL 33301, and **TMF HOLDCO, LLC**, a Delaware limited liability company, authorized to transact business in the State of Florida ("Applicant"), with its principal address located at 9348 Civic Center Drive, Beverly Hills, California 90210 (individually referred to as "Party" and collectively as "Parties").

WHEREAS, at its meeting on October 5, 2021 (CAM 21-0745), the City Commission of the City of Fort Lauderdale approved a five (5)-year term Agreement between the City and Applicant for a 3-day beachfront outdoor event named the Tortuga Music Festival ("Event") and the option for Parties to mutually extend the contract period for three (3) additional five (5)-year consecutive terms, subject to and conditioned upon certain terms and conditions outlined in the Agreement ("Agreement"); and

WHEREAS, the Agreement's current Term will expire on December 31, 2025; and

WHEREAS, pursuant to Section 4.b. of the Agreement, City and Applicant mutually desire to enter into a First Amendment and Extension to the Agreement to extend the Term of the Agreement for an additional 5-year period and update the Event's insurance coverage to limits required by the City and approved by City's Risk Manager ("First Amendment");

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable considerations, the Parties covenant and agree as follows:

- I. **RECITALS:** The foregoing recitals are true and correct in all respects and are incorporated herein by reference.
- II. **DEFINITIONS:** For purposes of this First Amendment, capitalized terms used but not defined herein have the meanings assigned to them in the Agreement.
- III. **AMENDMENTS:** The Parties agree to amend the Agreement as follows:

- A. Subsection 4a. of the Agreement under the provision titled "Term" is amended as follows:

Section 4. **TERM:**

- a. Parties have mutually agreed to exercise the first of three (3) additional five-year consecutive renewal terms and, consequently, the first extension to the Agreement shall commence upon execution of this First Amendment and shall expire on December 31, 2030, subject to and conditioned upon all remaining terms and conditions outlined in the Agreement. The remainder of Section 4

shall remain unchanged.

- B. Section 17 of the Agreement titled “Standards of Conduct; Compliance with Rules, Regulations, Ordinances” shall be deleted in its entirety and replaced with the following:

Section 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, including without limitation all Event impact fees and costs as approved and amended or revised from time to time by the City Commission, 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. As a condition precedent to the approval of each annual Event and to the extent Applicant intends to close or otherwise restrict the public’s access to the lands below the mean high-water mark during any of Applicant’s Events during the term of this Agreement, Applicant shall, prior to the start date of each Event, secure a permit from the State of Florida Department of Environmental Protection (FDEP), Board of Trustees of the Internal Improvement Fund, which shall grant Applicant with the authority to close or otherwise restrict the public’s access to the lands below the mean high-water mark and said permit shall remain valid and active for the entire term period of each Event, as amended, and until the final date of each Event. 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.

- C. Section 18 of the Agreement titled “Insurance” shall be deleted in its entirety and replaced with the following:

Section 18. **INSURANCE:**

As a condition precedent to the effectiveness of this Agreement, during each Event Period of this Agreement (including as part of any renewals or extensions of this Agreement), the Applicant, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of Applicant. Applicant shall provide the City a certificate of insurance evidencing such coverage. Applicant’s insurance coverage shall be primary insurance for all applicable policies, in respect to the City’s interests for this Agreement. The limits of

coverage under each policy maintained by Applicant shall not be interpreted as limiting Applicant's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by Applicant for assessing the extent or determining appropriate types and limits of coverage to protect Applicant against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipality, its officials, employees, and volunteers are to be included as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Liquor Liability

Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$2,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g., host or other coverage), Applicant shall provide written documentation to confirm that coverage already applies to this Agreement. In the event Applicant uses a contractor for the sale and/or service of alcohol, Applicant shall require contractor to

provide evidence of this coverage and Applicant will ensure its liability insurance policy provides vicarious and/or host liquor liability coverage.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$2,000,000 combined single limit each accident.

If Applicant does not own vehicles, Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Watercraft Liability (Protection and Indemnification)

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

Applicant waives, and Applicant shall ensure that Applicant's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore and Harbor Workers' Compensation Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.

- b. Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement Term or any surviving obligation of Applicant following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be included as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on Applicant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
Attn: Parks & Recreation
401 SE 21st Street
Fort Lauderdale, FL 33316

Applicant has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for including the City as an Additional Insured shall be at Applicant's expense.

If Applicant's primary insurance policy/policies do not meet the minimum requirements as set forth in this Agreement, Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

Applicant's insurance coverage shall be primary insurance in respect to the City's interests for this Agreement, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by Applicant that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the Agreement work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage may be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an updated certificate of insurance should any policies expire prior to the expiration of this Agreement.

Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to Applicant's insurance company or companies and the City's Risk Management office as soon as practical.

It is Applicant's responsibility to ensure that any and all of Applicant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of Applicant. If the City desires to adjust the insurance limits during the Term, it shall provide reasonable advance notice to Applicant so that the Parties can discuss the basis for such request and ascertain the feasibility of obtaining additional coverage, if required. Insurance limits shall be determined on an annual basis upon mutual agreement of the Parties for the duration of the Term.

- D. A new Section 36 titled "Anti-Human Trafficking" is hereby created and incorporated into the Agreement as if fully stated therein:

Section 36. **Anti-Human Trafficking.**

As a condition precedent to the effectiveness of this First Amendment, the Applicant shall provide the City with an affidavit on a form provided by and approved by the City and signed by an officer or a representative of the Applicant under penalty or perjury attesting that the Applicant does not use coercion for labor or services as defined in Section 787.06, Florida Statutes (2024), as may be amended or revised.

- IV. **COUNTERPARTS:** This First Amendment may be executed in one (1) or more

counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e- mail delivery of a .PDF format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or .PDF signature page were an original thereof.

- V. **HEADINGS**: Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this First Amendment or the Agreement.
- VI. **NO OTHER CHANGES**: Except as modified by this First Amendment, all terms, covenants, obligations and provisions of the Agreement shall remain unaltered, shall continue in full force and effect, and are hereby ratified, approved and confirmed by the parties in every respect. If the terms and conditions set forth in this First Amendment directly conflict with any provision contained in the Agreement, then this First Amendment shall control.

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IN WITNESS WHEREOF, the City and the Applicant execute this FIRST AMENDMENT as follows:

CITY

ATTEST:

CITY OF FORT LAUDERDALE, a Florida municipality

David R. Soloman, City Clerk

By: _____
Rickelle Williams
City Manager

Date: _____

Approved as to form and correctness:
D'Wayne M. Spence, Interim City Attorney

By: _____
Patricia SaintVil-Joseph
Assistant City Attorney

APPLICANT

TMF HOLDCO, LLC, a Delaware Limited Liability Company authorized to transact business in the State of Florida.

WITNESSES:

By: **CN HOLDCO, LLC**, a Delaware Limited Liability Company, its managing member.

Signature

By:

BRIAN O'CONNELL
President

Print Name

Signature

Print Name

[CORPORATE SEAL]

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2025, by **BRIAN O'CONNELL** as President of **CN HOLDCO, LLC**, a Delaware Limited Liability Company, in its capacity as Managing Member of **TMF HOLDCO, LLC**, a Delaware Limited Liability Company authorized to transact business in the State of Florida.

[NOTARY SEAL]

Notary Public, State of Florida
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned
Name of Notary Public)

Personally Known ____ OR Produced Identification ____
Type of Identification Produced _____