

**PRELIMINARY DRAFT IN DISCUSSION WITH CITY
MANAGEMENT AND STAFF AS OF 9/14/21**

**SECOND AMENDMENT TO
PARTNERSHIP AGREEMENT BETWEEN THE CITY OF SARASOTA
AND THE BAY PARK CONSERVANCY, INC.**

This is the Second Amendment to the Partnership Agreement entered into between the City of Sarasota, Florida and The Bay Park Conservancy, Inc. (“BPC”) with an effective date of April 24, 2019 and is dated this ____ day of _____, 2021. These entities are referred to collectively herein as “the parties”.

WHEREAS, City is a municipal corporation of the State of Florida; and,

WHEREAS, City is the owner of a parcel of real property approximately fifty three (53) acres in size which is bounded on the west by the waters of Sarasota Bay, on the east by N. Tamiami Trail (U.S. 41), on the south by Boulevard of the Arts and on the north by properties owned by Florida Power & Light Co. and International Barter Exchange, and includes the 15,441 SF parcel having a street address of 1000 Boulevard of the Arts added as a part of the Second Amendment to the Partnership Agreement on October 21, 2019; and,

WHEREAS, the catalyst for this initiative was Bayfront 20:20 formed in November, 2013, to facilitate a community dialogue that resulted in a statement of Vision and Guiding Principles (**Exhibit A**) for the transformation of the city-owned site into a public park; and,

WHEREAS, the Vision and Guiding Principles for the redevelopment of the site were endorsed by the City Commission in February 17, 2015; and,

WHEREAS, the City Commission agreed to the formation of a planning board, the Sarasota Bayfront Planning Organization (the “SBPO”), in July 2016, to recommend a Master Plan for development of the site; and,

WHEREAS, the SBPO led a disciplined, open and transparent process which resulted in the approved Master Plan adopted by the City Commission on September 6, 2018; and,

WHEREAS, the Approved Master Plan is intended to guide the transformation of the site into an iconic city park to be known as The Bay Park with development to occur generally over the next ten to fifteen years; and,

WHEREAS, the SBPO transitioned into The Bay Park Conservancy, Inc. (BPC) which has operated for nearly three years as the exclusive design, planning and development, co-funding, and operating partner of the City of Sarasota, and has established credibility and trust as a dependable partner committed to creating, building and operating a public park that is financially feasible, operationally responsible, and environmentally sustainable; and,

WHEREAS, BPC has demonstrated its commitment to sustainability best practices and high environmental standards throughout current and planned implementation projects; and

WHEREAS, the City and the BPC working together with a team of capable and experienced resources, private and public investors, have created a natural shoreline on the western edge of the park south of the Mangrove Bayou, a Fountain Garden at the corner of Boulevard of the Arts and North Tamiami Trail, a restored Mangrove Bayou with a new walkway, kayak launch, and other amenities; and,

WHEREAS, on September 6, 2018 the City Commission approved a conceptual design for Phase 1 of The Bay Park on ten (10) acres at the southern end of the site along the north side of the Boulevard of the Arts and, on March 8, 2021 the City Commission approved a Site Plan for the same 10 acres which is currently being developed, and is scheduled to open in June 2022; and,

WHEREAS, the City and the BPC have a common goal to fully implement The Bay Park Master Plan as soon as is possible for the enjoyment of Sarasota’s citizens; and,

WHEREAS, the City and the BPC have a demonstrated a track record of partnership under the existing terms of this Partnership Agreement (“PA”), but have learned through what works well in the current PA to further this common goal, and what detracts from this goal and should be improved, changed or eliminated to enable The Bay Park to be completed sooner for a lot lower cost.

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

1. Purpose of Agreement:

The primary purpose of this Partnership Agreement is to develop a signature public park on Sarasota Bay, to deliver on the promise of the Approved Master Plan, and to complete implementation of The Bay Park in a cost-efficient, expeditious and high-quality manner. This agreement will enable a high-functioning, long-lasting partnership between the City and the Bay Park Conservancy. This agreement will clearly define the roles of each party and propose a simple, streamlined process by which The Bay Park will be designed and planned, funded and built, operated and sustained.

2. BPC Organizational Structure:

BPC shall maintain its current status under the U.S. Internal Revenue Code as a 501(c)(3) not-for-profit organization while this Partnership Agreement is in effect. BPC shall have a Board of Directors consisting of not less than seven (7) and not more than fifteen (15) members. The Board of Directors shall include three (3) non-voting ex officio members; two ex officio directors shall be appointed by the City, with one director appointed by majority vote of the City Commission and the other director appointed by the City Manager. The third ex officio director shall be a representative of Sarasota County Government and may be appointed as determined by the Board of County Commissioners.

3. General Relationship Between the Parties:

The parties agree to work together at all times in good faith to implement the Approved Master Plan for The Bay Park, to communicate on a regular basis, to keep each other fully informed as to the activities of the other, to act as partners, and to maintain at all times formal representatives who shall serve as a point of contact for communications. The parties will operate and interact in the spirit of good faith and cooperation, with certain authority and responsibilities delegated to BPC as more fully specified herein, to avoid duplication of costs, redundancy and to promote the most efficient and sustainable use of resources for The Bay Park. However, the City shall remain the sole and exclusive owner of all real property comprising The Bay Park and shall become the owner of all improvements constructed within the park.

4. General Responsibilities of BPC:

- A. BPC will have the exclusive responsibility for the following to implement the Approved Master Plan:
1. The Approved Master Plan fulfills the original Partnership Agreement requirement for an agreed conceptual park design and plan; and, thus, fully satisfies the requirement of and eliminates the need for a separate Implementation Plan. BPC is currently collaborating with the City to simplify the development approval process, including a Zoning Text Amendment and Rezone Application to create a Bay Park zoning district, to allow for administrative approval of: a) site plans, if generally consistent with and are a straightforward execution of the already agreed to Approved Master Plan, and b) Major Conditional Use for structures on or near the water.
 2. BPC shall prepare all applications for development approvals required to construct The Bay Park (except for building permit applications which may be prepared by the City or by contractors) and shall file such applications with the City. BPC (or its designee) will continue to apply for required permits for smaller site area improvements such as landscape and irrigation, lighting replacement, site furnishing replacement, etc.
 3. BPC shall determine the sequence in which areas of the Approved Master Plan are implemented.
 4. BPC shall incorporate sustainable best design practices, including for example softening and improving the resiliency of the shoreline, meeting or exceeding current FEMA standards and applying effective renewable energy and stormwater treatment strategies for The Bay Park.
 5. As part of the original Partnership Agreement, BPC prepared a Financial Plan for The Bay Park which outlined proposed public and private funding sources for capital improvements and for operational expenses. A copy of The Bay Park Phase 1 Capital Funding Sources dated April 2, 2019 is appended to this Amended Agreement as **Exhibit B**. City and BPC co-funding responsibilities are delineated in **Section 6** of this LTPA.
 6. BPC has established an endowment for the benefit of The Bay Park. The corpus of and all income from the endowment shall be used exclusively in furtherance of the Approved Master Plan consistent with the mission and purpose of BPC. In the event of the

termination of BPC, these funds shall be given to a non-profit foundation mutually agreeable to the parties to be used for The Bay Park. Alternatively, these funds shall be expended in accordance with private donor or City imposed restrictions, if applicable.

7. BPC shall evaluate the future use and management of all existing City-owned and operated, or leased buildings within The Bay Park, excluding the Van Wezel Performing Arts Hall and the Beatrice Friedman Symphony Center for as long as the Sarasota Orchestra occupies the building.
 8. BPC shall continue proven community outreach which enables engagement and input. The Community and Neighborhood Working Group, which includes representatives from all adjacent neighborhood organizations, and other stakeholders in the community, will meet semi-annually. In addition, BPC will continue to meet with the community on subjects of mutual interest. Meetings of the Bay Park Conservancy Board of Directors will continue to be noticed and open. BPC will continue to dialogue with the thousands who subscribe to The Bay weekly newsletter and follow park progress via social media and on the website.
- B. Subsequent to the completion of construction of each phase or area of The Bay Park, BPC shall undertake the following general duties:
1. Submit completed “as built” drawings for all construction of The Bay Park to the City Development Services Department and to the City Engineer.
 2. BPC shall negotiate the terms of proposed concession agreements and leases with third parties selected by BPC who desire to operate business establishments within The Bay Park.
 3. Implement activities and programming consistent with the Implementation Agreement (**Exhibit C**).
 4. Undertake management responsibilities for day-to-day operations and ongoing maintenance of completed park areas consistent with the Implementation Agreement (**Exhibit C**).
- C. At any time, this Agreement is in effect, BPC may also undertake the following activities in furtherance of the Approved Master Plan:
1. BPC may develop construction standards and specifications to be utilized in the construction of capital improvements that are funded by BPC. Such standards and specifications will comply with City of Sarasota codes.
 2. BPC may hire employees as BPC deems warranted to perform its obligations under this Agreement and to implement the Approved Master Plan and may, in its discretion, assign particular duties to its employees. BPC may likewise utilize the services of unpaid volunteers to perform its obligations under this Agreement and to implement the Approved Master Plan. BPC shall not hire City employees to function simultaneously as BPC employees. However, this prohibition shall not prevent BPC from hiring City employees for temporary assistance, such as off-duty police officers for assistance with special events. BPC shall be responsible for the training, management, supervision and

salaries of all BPC employees. BPC shall maintain a Worker's Compensation policy that includes a waiver of subrogation in favor of the City.

3. BPC will implement its Naming Rights Policy appended to this Agreement as **Exhibit D**.
4. BPC will implement its Bay Park Arts Policy appended to this Agreement as **Exhibit E**.

5. General Responsibilities of City:

Prior to and during the time that The Bay Park is under construction, the City shall undertake the following obligations to implement the Approved Master Plan:

- A. City shall collaborate with BPC to streamline and simplify the approval and permitting process, where practical, to enable implementation of the Approved Master Plan in a more cost-effective, expeditious and efficient manner.
- B. City shall make City staff available to BPC at reasonable times upon request after reasonable advance notice for pre-application conferences so that staff can become familiar with and discuss proposed applications for development approvals with BPC.
- C. City shall cause its staff to make every reasonable effort to respond to inquiries received from BPC regarding implementation of the Approved Master Plan and regarding City codes, procedures and requirements in an expeditious, complete and accurate manner.
- D. City shall consider all applications for development approval filed by BPC to be City-initiated applications not included in the City's Billable Fee System. Additionally, the City shall not charge pre-application conference fees to BPC for meetings with City staff associated with BPC applications for development approvals in The Bay Park.
- E. City shall maintain its existing responsibility to provide all basic infrastructure to the site, including by way of example and not limitation, streets, sidewalks and infrastructure for water and sanitary sewer services. City shall undertake funding responsibility for construction and maintenance of new basic infrastructure in The Bay Park as may be required for implementation of the Approved Master Plan. BPC shall coordinate with the appropriate City departments regarding necessary infrastructure upgrades to accommodate the Approved Master Plan.
- F. In the event the City Commission votes affirmatively to construct a new PAC and parking garage for the convenience of visitors to the Sarasota Performing Arts Center and/or The Bay Park at some future date, City shall fund the cost of constructing the PAC garage.
- G. City shall maintain its existing responsibility to provide municipal services and routine maintenance to the site, including by way of example and not limitation, public restroom cleaning, litter control and trash pickup, security, utilities, landscape and other maintenance. City shall undertake funding responsibility for municipal services in The Bay Park as it would any other municipal park.
- H. City shall grant BPC the use of on-site space for offices and operations at no cost to BPC, except that BPC shall be responsible for routine maintenance and for obtaining tenant's insurance covering personal property and insuring BPC and City against claims for damages.
- I. City shall continue to make its lobbyist and grants coordinator available to continue to raise funds and garner support for implementation of The Bay Park.

6. Joint or Shared Responsibilities of the City and the BPC

A. Cooperative Funding

1. Capital Development and Improvements

- a. Tax Increment Financing (TIF): An Interlocal Agreement to provide cooperative local City and County Funding of Capital Improvements to The Bay Park, using tax increment methodology to determine shared revenue contribution toward Park capital improvements, was approved by the City Commission on October 19, 2020, and the Sarasota County Board of Commissioners on November 4, 2020. The Bay Park Improvement Board (BPIB) was established in 2021 to assist with administration of these revenues, consistent with the Interlocal Agreement. TIF financing should provide significant capital funding in the future for The Bay Park (and for a new Sarasota Performing Arts Center if/ when one is approved).
- b. To date, the vast majority of capital funding has been raised by BPC from private sources, foundations, philanthropists, and more than one thousand individuals and businesses in the community. BPC has secured more than \$25 million in cash, more than enough to cover the capital cost of the park now under development that will open in Summer 2022.
- c. City has contributed/ committed \$3 million in capital per year from its 2019, 2020, and 2021 operating budgets.
- d. In addition, BPC has received grants from Federal, State, and other government agencies totaling \$1 million, with an additional \$3.5 million in expected grants in the next few months. In addition, we have applied for \$11.5 million in future grants.

2. Operating Expense for BPC and The Bay Park

BPC has raised funds to cover the vast majority of annual operating and maintenance expenses for the park to date (about \$850K per year) from private sources, including annual gifts from BPC Board members, annual Friends of The Bay/ Giving Challenge campaigns, and unrestricted gifts from other donors.

3. Future funding sources include all of the above private and public sources and, in addition, may possibly include: a Future Tourist Development Tax/ Penny Sales); net revenues generated from concessions to third parties to operate food and beverage and other park-related retail in the park; and net revenues generated by events in the park.

This Agreement shall not obligate BPC to raise a specific sum of money within a specific period of time. This Agreement shall not obligate the City to undertake any financial obligations, except for the direct or indirect costs of the obligations enumerated in **Section 5**. The financial obligations of City with respect to operations and maintenance of The Bay Park shall be specified in the Implementation Agreement (**Exhibit C**). However, both parties agree that The Bay Park will be financially feasibly, operationally responsible and environmentally sustainable.

B. Joint Park Operations Responsibilities

Joint City and BPC management and operations responsibilities for the park as it is developed are provided for in the Implementation Agreement (**Exhibit C**). City shall maintain its existing responsibility to provide municipal services and routine maintenance to the site (**Section 5-G**). BPC will provide for enhanced infrastructure (e.g., boardwalks, docks, interior roadways and walkways, etc.), maintenance, and services.

C. Special Events

City shall continue to exercise its authority to permit special events which may take place in The Bay Park and/ or on the 53-acre site unless and until such authority is delegated to BPC, as specified in the Implementation Agreement (**Exhibit C**).

7. **Phased Development Review:**

BPC was previously authorized by City under the original Partnership Agreement to commence preparation for execution of implementation of the Approved Master Plan. Upon request, BPC shall be provided with a reasonable level of City staff assistance, as determined by the City Manager, in the processing of applications for development approvals.

All applications for development approval within The Bay Park shall be filed and processed in accordance with whatever applicable Zoning Code regulations are in effect at the time an application is filed.

8. **Leases and Concessions:**

BPC shall have the exclusive responsibility to negotiate and execute proposed leases and concession agreements with third parties desirous of operating businesses to serve park visitors. Agreements shall be in accordance with acceptable legal and business standards which are agreeable to the City Manager or designee, provided that no such agreement shall become effective until all applicable development approvals have been obtained.

9. **Construction Contracts:**

The City Commission may permit BPC to enter into contracts with third party general contractors for the construction of capital improvements and landscaping or other features at The Bay Park in accordance with the Approved Master Plan. BPC shall comply with the applicable provisions of the City's Procurement Code regarding the process for competitive selection of qualified contractors. However, alternatively, BPC is authorized to develop a proposed written process for procurement and competitive selection of qualified contractors for the construction of capital improvements in The Bay Park. BPC shall not be authorized to utilize this procurement process unless and until it has received written approval from the City Manager, City Purchasing Manager and the City Attorney. Any construction contracts entered into by BPC with third party contractors shall contain an Indemnification and Hold Harmless Clause in favor of the City in substantially the form reflected in **Exhibit F** appended to this Agreement.

The parties shall strive to achieve and shall diligently pursue minority contractor participation in construction contracts and local hiring strategies for The Bay Park using the same standards utilized by the City. BPC, in consultation with City staff, may develop a policy to encourage the use of local vendors and contractors (as defined by City ordinance) for work performed at The Bay Park.

10. Insurance Requirements:

- A. **Applicable to City:** City should have in place the same amount of insurance as it carries on all other city parks.
- B. **Applicable to BPC:** BPC shall maintain a general liability insurance policy in the amount of One Million Dollars (\$1,000,000.00) bodily injury and property damage combined single limit to cover losses that may be sustained by third parties in connection with any work performed at The Bay Park (including but not limited to demolition and construction work) by BPC or its contractors. The City shall be named as an additional insured under the general liability policy. The general liability policy shall be primary with respect to the additional insured. BPC shall provide the City's Risk Manager with a Certificate of Insurance and with an Endorsement to the policy indicating that the City is an additional insured. Insurance requirements applicable to third party lessees or concessionaires shall be described in the applicable lease agreement or concession agreement.
- C. **Applicable to General Contractors:** Any contracts with general contractors procured by BPC in accordance with Section 10 shall be reviewed by City prior to execution to determine the adequacy of insurance coverage protecting the City and to determine that the hold harmless and indemnity provision required by Section 10 is included. In the event City determines that the proposed coverage is inadequate for any reason or determines that the required hold harmless and indemnity provision is not included, then the contract shall not be executed. If a contract deemed deficient under this subsection is executed, City will not permit work under the contract to commence on its property. The City shall be covered as an additional insured under any general contractor liability insurance policy in effect during construction (excluding Worker's Compensation), and such insurance shall be primary with respect to the additional insured. BPC or its general contractor shall provide the City's Risk Manager with a Certificate of Insurance and with an Endorsement to the policy indicating that the City is an additional insured. Additionally, every contractor of BPC shall obtain and maintain Worker's Compensation insurance in accordance with applicable Florida Statutes, including a waiver of subrogation in favor of the City.

11. Government in the Sunshine Law:

Because the primary goal of BOC is to assist the City, which is a public agency subject to requirements of Florida's Government in the Sunshine Law (the "Sunshine Law"); because BPC will be carrying out its functions and responsibilities on public City-owned property; and because BPC will play an important role in the decision-making process of the City with respect to implementation of the Approved Master Plan for The Bay Park, the parties agree that BPC, its Board of Directors and any standing committees created by BPC shall function subject to the Sunshine Law and shall comply with the requirements of the Sunshine Law.

Meetings of the BPC Board of Directors shall be noticed to the general public a reasonable time in advance of the meeting by posting on the BPC website and by such other means as may be appropriate under the circumstances, taking into account the items under consideration and the matters to be decided. Minutes of such meetings shall be taken, and the minutes shall be public records in accordance with Section 13 below. All BPC Board of Directors meetings shall be open to the public. BPC shall comply with the requirements of Sec. 286.0114 *Florida Statutes* regarding a reasonable opportunity for members of the public to be heard on a “proposition” before the Board.

Communications among members of the BPC Board of Directors concerning any matters reasonably foreseeable to come before the Board of Directors shall be confined to open public meetings, duly noticed to the public in advance for which minutes are taken and transcribed. BPC shall advise its directors and the City shall advise the two *ex officio* directors the City appoints pursuant to Section 2 above that the *ex officio* directors are also subject to this limitation on their communications with other directors.

12. Florida Public Record Act:

BPC shall maintain records and accounts in connection with the performance of its duties under this Agreement that accurately reflect and document the source and amount of all funds received by BPC. BPC shall likewise maintain records and accounts that accurately reflect and document all costs incurred by BPC, including salaries and operational expenses. Such records of costs incurred shall include the nature of the expenditure, shall identify to whom the funds were paid and the date of payment. All records made or received by BPC in connection with the performance of the functions specified herein, including but not limited to the above-described records of income, donations and expenditures shall be kept and maintained by BPC and shall be considered public records subject to disclosure upon request from the City or a member of the general public.

BPC may, but shall not be required to, respond directly to public records requests from the general public. In accordance with Sec. 119.0701(3)(a) *Florida Statutes*, a request to inspect or copy public records relating to a public agency’s contract for services must be made directly to the public agency (i.e., to the City). If the City does not possess the requested records, the City shall immediately notify BPC of the public records request, and BPC shall provide the records to the City or allow the records to be inspected and copied within a reasonable period of time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, the Public Records Act.

BPC shall ensure that public records that are exempt from disclosure or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this agreement and following the termination or expiration of this Agreement if BPC does not turn over and transfer possession of the public records to the City.

Upon the completion, termination or expiration of this Agreement, BPC shall transfer, at no cost, to the City all public records in its possession or keep and maintain the public records required by this Agreement to perform the services described herein. If BPC transfers all public records to the City, BPC shall destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. If BPC keeps and maintains public records upon the termination or expiration of this Agreement, then BPC shall meet all applicable requirements for retaining public records.

All records stored electronically shall be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF BPC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PARTNERSHIP AGREEMENT, BPC SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS USING THE CONTACT INFORMATION BELOW:

Shayla Griggs, City Auditor and Clerk
Sarasota City Hall, 1565 1st St., Sarasota, FL 34236
Phone (941) 954-4160
Email address: Shayla.Griggs@sarasotafl.gov

Notwithstanding the Alternative Dispute Resolution requirements in Section 21 of this Agreement, City shall have the right to enforce the terms of this section 13 by an action for specific performance and/or by an action for mandatory injunctive relief.

13. Conflicts of Interest:

The members of the BPC Board of Directors shall comply with Article IX of the BPC By-Laws, entitled "Conflict of Interest Policy", a copy of which is appended to this Agreement as **Exhibit G**. Article IX of the BPC By-Laws shall not be removed from the By-Laws while this Agreement is in effect. Article IX of the BPC By-Laws shall not be amended without the prior consent of the City Commission.

14. Annual Report (including Audit):

BPC will issue an Annual Report that includes: discussions of development, implementation, and park operations; financial reports including a balance sheet, income statement; and an annual audit of its operations and finances by an independent Certified Public Accountant. When completed, the Annual Report shall become public record.

15. Term of Agreement:

The term of this Agreement shall be fifteen (15) years from the date this Second Amendment is executed by both parties, (the "Initial Term"). The Initial Term is intended to coincide with the estimated time required to transform the site into The Bay Park in accordance with the Approved Master Plan. This Agreement shall automatically renew for successive fifteen (15) year

terms (each a Renewal Term) unless either party delivers written notice to the other party of its intention to terminate this Agreement prior to the commencement of a Renewal Term in accordance with Section 16 below, or unless the City delivers written notice to BPC that it desires to terminate this Agreement in accordance with Section 17 below; or unless this Agreement is terminated in accordance with Section 19 below.

16. Termination of Agreement:

Either party may terminate this Agreement prior to the commencement of a renewal term after majority vote of the City Commission to terminate in the case of the City or majority vote of the Board of Directors to terminate the case of BPC; by providing written notice to the other party of its intention to terminate no later than ten (10) months prior to the commencement of the fiscal year in which the expiration date of the initial term or renewal term will occur. For purposes of this section, the commencement of the fiscal year shall mean October 1 of each calendar year. If notice is timely provided, the termination shall become effective at the end of the initial term or the renewal term, as applicable.

17. Termination Events:

In addition to the right to terminate this Agreement following an unsuccessful Alternative Dispute Resolution process as provided in Section 19 below, City shall have the right to terminate this Agreement in accordance with this Section. City shall terminate this Agreement at any time during the initial term or the Renewal Terms in the event that BPC fails to maintain its status as a Section 501(c)(3) organization; however, such termination shall occur only after thirty (30) days advance written notice to BPC with an opportunity to cure. City may, but is not required to, terminate this Agreement at any time during the Initial Term or the Renewal Terms in the event that BPC or any of its directors fail to comply with the requirements of Section 12 of this Agreement pertaining to the Sunshine Law; in the event that BPC or any of its directors fail to comply with the requirements of Section 13 of this Agreement pertaining to public records; or in the event that a director of BPC fails to comply with Section 14 pertaining to voting conflicts. Termination in accordance with this Section for failure or alleged failure to comply with Sections 12, 13 or 14 shall require placement of the proposed termination on an agenda of a regular City Commission meeting for a vote as an item of New Business. A minimum of thirty (30) days advanced written notice of the meeting and agenda item to be considered shall be provided to BPC.

18. Discrimination Prohibited:

The City and BPC shall not discriminate based upon race, color, creed, religion, sex, national origin, marital status, age, physical disability, sexual orientation, gender identity or based upon any ordinance while performing the functions described in this Agreement and throughout the implementation of the Approved Master Plan.

19. Alternative Dispute Resolution:

In acknowledgement of the relationship of trust and cooperation between the parties, the parties agree that any dispute or disagreement arising under this Agreement that is not able to be resolved after good faith collaborative efforts to do so shall be submitted to an alternative

dispute resolution process. The parties further agree that such process shall be the sole and exclusive means of resolving disputes between them in any way related to this Partnership Agreement. The Alternative Dispute Resolution process shall be initiated by the way of a written communication from the initiating party to the other party. For purposes of this Agreement, alternative dispute resolution (ADR) shall mean adherence to the following process: Step One shall be a meeting between the City Manager and the Executive Director of BPC, which shall be convened as soon as practicable. Follow up meetings may also be scheduled as agreed and shall be deemed a part of Step One. If there is no resolution either during Step One or during the ninety (90) day period from the date that ADR was first invoked, the parties shall be deemed at impasse, and the ADR process shall progress to Step Two.

Step Two shall be placement of the subject matter of the dispute on the agenda of the next available City Commission meeting. At such meeting the City Commission shall do one of the following:

1. Decide as to how to resolve the dispute
2. Delegate the task of resolving the dispute to a qualified and willing designee for a recommendation
3. Determine that it is unable to resolve the dispute and therefore terminate this Agreement.

In the event BPC disagrees with the decision of the City Commission as to how to resolve the dispute, whether made initially or after referral to a designee for recommendation; or in the event the City Commission fails or refuses to undertake any of the three alternatives specified above; then in any of these events, BPC shall have the right to terminate this Agreement. In the event of termination in accordance with this Section 21, thirty (30) days advance written notice of termination shall be provided by the terminating party to the non-terminating party.

For the purposes of this Section 21, the phrase “dispute or disagreement arising under this Agreement” shall include, but shall not be limited to, disputes arising from the factual or alleged failure or refusal of the City to budget and appropriate sufficient funds to construct improvements, to fund construction contracts or to conduct other activities in furtherance of the Approved Master Plan. However, the term “dispute or disagreement arising under this Agreement” shall not include disputes over the final decisions of the City Commission on any site plan, conditional use or other development application.

20. Notices to Parties:

Notices and other correspondences required by or pertaining to this Agreement shall be sent to the respective parties at the following addresses:

To the City of Sarasota at:

City of Sarasota
1565 First Street, Sarasota, FL 34236
Attention: Marlon Brown, City Manager

With a copy to:

Robert M. Fournier, City Attorney
1 South School Avenue, Suite 700
Sarasota, FL 34237

To The Bay Park Conservancy, Inc. at:

The Bay Park Conservancy, Inc.
655 N. Tamiami Trail, Sarasota, FL 34236
Attention: Chair of the Board of Directors

With a copy to:

The Bay Park Conservancy, Inc.
655 N. Tamiami Trail, Sarasota, FL 34236
Attention: Executive Director

IN WITNESS WHEREOF, the City of Sarasota and The Bay Park Conservancy, Inc. have caused this Partnership Agreement to be executed, in duplicate, by their respective duly authorized officials on the dates set forth below.

DATED this _____ day of _____, 2021 by the City of Sarasota, Florida.

DATED this _____ day of _____, 2021 by The Bay Park Conservancy, Inc.

CITY OF SARASOTA, FLORIDA

By: _____
Hagen Brody, Mayor

ATTEST:

By: _____
Shayla Griggs
City Auditor and Clerk

THE BAY PARK CONSERVANCY, INC.
A Florida Not-For-Profit Corporation

By: _____
Cathy Layton, Chair, Board of Directors

STATE OF FLORIDA
COUNTY OF SARASOTA

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2021 by Cathy Layton, as Chair, Board of Directors of The Bay Park Conservancy, Inc., a Florida not-for-profit corporation. She is personally known to me or has produced _____ as identification.

(Seal) By: _____
Notary Public

Agreement approved as to form and correctness:

By: _____
Robert M. Fournier, City Attorney

EXHIBIT A

SBPO

SARASOTA BAYFRONT
PLANNING ORGANIZATION

Mission

The mission of The Bay is to present a vibrant, comprehensive, long-term masterplan for the City of Sarasota and its community that is financially feasible, operationally viable and environmentally sustainable.

Vision Statement

We support the creation of a long-term master plan for the Sarasota bayfront area that will establish a cultural and economic legacy for the region while ensuring open, public access to the bayfront.

Guiding Principles in Support of the Vision Statement

Aspiration: Sarasota's bayfront will be an iconic, public destination that welcomes the diversity of Sarasota, enhances our status as a cultural capital and serves as a venue for multi-generational, inter-neighborhood, broad-based enjoyment of our bayfront.

Cultural Heritage: The bayfront's identity as a cultural, arts and educational destination will be strengthened, anchored by some of the region's most important institutions and rooted in Sarasota's diverse cultural legacy.

Bayfront/Natural Assets: Welcoming, attractive, publicly accessible, safe, fun and family friendly open space celebrating the bayfront's natural heritage will be developed along the bayfront for future generations. Views of the Bay will be enhanced.

Activation Outdoor cultural programming, aquatic and onshore recreational programming, educational programming, urban amenities, plentiful shade, adequate lighting and alternatives to surface parking will support the active and passive usage of the bayfront throughout the day and evening and in all seasons.

Connectivity: Greatly improved connectivity among the bayfront, adjacent neighborhoods and the wider region is necessary to achieve our aspirations. Improved connectivity will be accomplished via safe, convenient pedestrian, bicycle, and water transit connections to the north, south, east and across the Bay. Convenient automobile access to the site should be accommodated with the smallest practicable footprint.

Sustainability: Ecological, economic and financial sustainability are fundamental to the long-term success of Sarasota's bayfront and critical to the realization of our aspirations. Achieving a sustainable future for the bayfront will require continuous cooperation among the public, private and non-profit sectors.

Vision and Guiding Principles Adopted by Sarasota City Commission February 17, 2015

EXHIBIT B

The Bay Park Phase 1 Capital Funding Sources – 4/02/19

Phase 1 – Estimated Capital Funding Sources

Sources	Minimum Base Funding	Aspirational Funding (up to) ⁽²⁾
State and Federal Sources	\$1-2M	\$2-5M
Development Impact Fees	\$1M	\$2M
City Capital Support	\$1-2M	\$2-3M
Tax Increment Financing ⁽¹⁾	\$1-2M	\$2-3M
Philanthropy	\$10-15M	\$15-20M
Total Revenues	\$14-22M	\$23-33M

⁽¹⁾ Depending on the pace of redevelopment and property value growth

⁽²⁾ Obtaining “aspirational level” of funding for some sources will likely lead to a reduction in funding need from other sources.

Proportional Funding Sources

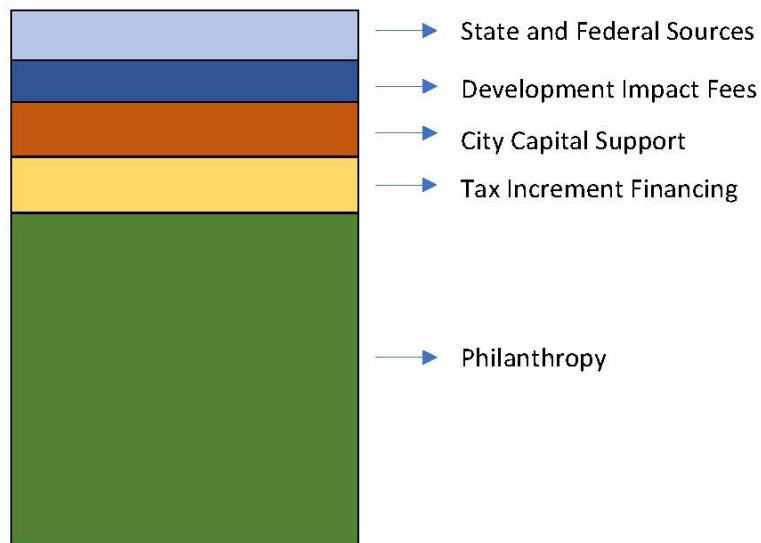


EXHIBIT C

September 3, 2021

Bay Park Implementation Agreement

This is the Implementation Agreement (IA) for The Bay Park.

This IA applies to the first phase, all subsequent phases, and the entire 53-acre park.

This IA is intended to be an integral part of the going Partnership Agreement (PA) between the City and The Bay Park Conservancy (BPC).

The attached exhibit shows the park area the BPC will be responsible for managing and operating beginning in the summer of 2022.

Principles:

This Bay Park IA addresses management, operations and maintenance subjects identified and addressed in the 15-year Long-Term Partnership Agreement (LTPA) between the City and the BPC signed on April 24, 2019 by Mayor Liz Alpert and BPC Board Chair Cathy Layton.

The IA affirms and enables the six guiding principles agreed to by: the City, Bayfront 20:20, Sarasota Bayfront Planning Organization (SBPO), and BPC. These principles were also included in the 2019-approved LTPA.

The guiding principles enable:

1. The conservation of city land for a public park.
2. Environmental restoration, enhancement, and sustainability of land and water.
3. Open, free and welcoming access.
4. 360-degree connectivity.
5. An enlivened, activated and programmed public destination.
6. A financially and operationally sustainable park conservancy and public park.

The BPC, the City, and this joint IA will comply with all City ordinances, City Parks and Recreation policies and regulations, and City Special Events policies and procedures which govern the management and operations of a public park in the City of Sarasota.

For example, from the Sarasota Code of Ordinances: 1) Chapter 22 Parks and Recreation governing Public Parks, 2) Chapters 22.2 and 29.6 governing Special Event permits, and 3) Chapter 20 governing Sound regulations.

Neither the City, nor the BPC, nor The Bay Park user community shall be required to comply with any ordinances, policies or procedures that do not apply to other public parks in the City.

The Bay Park operations and maintenance shall be similar, if not identical, to comparable City public parks. Bayfront Park is the most comparable park to The Bay Park.

The IA includes the necessary operational policies to enable effective BPC management of The Bay Park... but no more. For example, the IA references City and City Parks and Recreation ordinances, policies, and procedures, but not excerpt or repeat their provisions so that the IA is a manageable guide to Bay Park operations that will not require an amendment or change every time a City ordinance, policy or procedure changes.

The City has clear and well-established procedures and processes for interested citizens to recommend changes in City ordinances or policies. For example, the City's Noise Ordinance or the City's Special Events policies should be addressed outside of this IA.

Purpose:

The primary purpose of this IA is to provide for the governance and joint management of completed Bay Park use areas by the BPC and the City as indicated in the 15-year LTPA.

The Site Plan for the current development of Phase 1 was approved by the City Commission on March 8, 2021. The natural shoreline was completed by the City in the fall of 2019. The Fountain Garden was completed by the BPC in January 2020. The Blue Pagoda walkway and Municipal Auditorium lawn were completed by the BPC in the summer of 2021. The North Tamiami Trail landscaping and the BOTA entry walkway by the Fountain Garden and Sarasota Garden Club will be completed by Spring 2022.

Further additions to The Bay Park may be added at the discretion of the City or the BPC working in partnership to create an enjoyable experience for all park visitors.

Specific Practices:

Clean, safe and well-maintained are best practices for well-managed and operated parks.

- Hours of Operation: 5am-11pm. This is consistent with the City's recent approval of operating hours for all City parks.

Note: Centennial Park hours are extended from 11pm to 5am for active boating and fishing uses.

- Access and Connectivity: 360-degrees via walking, automobile, bicycle, boat, public transportation, ride share, et al. The main entrance to The Bay Park is at 10th street. Walking and biking access routes, parking lots, ride share drop-offs, etc. were all included in the March 2021 approved Phase 1 Site are available on The Bay Park website and social media and will be appropriately signed in the park.

Note: Hours of operation, access and connectivity, etc. for Centennial Park and the current Public Boat Launch are addressed on the City's Parks and Recreation website.

- Micro-mobility: The Bay Park will comply with City ordinances and regulations governing micro-mobility (e.g., bikes, e-bikes, scooters, et al) to ensure we achieve the right balance of access and safety for all park users.
- Public Restrooms: Will be available in the Concession Pavilion in Phase 1 during park hours. The City will be responsible for daily, regular cleaning and service. The BPC will provide enhanced service for the restrooms in the Concession Pavilion and the Blue Pagoda Visitor's Center, if/as needed.

Note: Public restrooms at the Centennial Park Public Boat Launch will continue to be managed by the City and open during indicated hours.

- Trash (including Recycling) Pick Up: Will be provided by the City throughout The Bay Park on a daily schedule. BPC will provide enhanced service if/as needed.
- Security: Will be provided by the Sarasota Police Department (SPD) commensurate with coverage and patrols provided to the Bayfront Park. In consultation with SPD, BPC will be testing sophisticated audio and video security monitoring. In addition, BPC management, staff and volunteers will be in the park on a regular basis.
- Landscape Maintenance: Basic maintenance will be provided Monday through Friday by the City. Enhanced maintenance will be provided by BPC. BPC will recruit and train park volunteers to provide some of these enhanced maintenance services.
- Capital and Maintenance of Essential Infrastructure (including but not limited to energy, stormwater, water and other utilities): Will continue to be provided by the City, per the LTPA. Basic lighting will be provided by the City, enhanced lighting by the BPC. Storm water drains and sewers will be maintained by the City, cleaning of the top of the storm water grates will be maintained by the BPC.
- Sunset Boardwalk: The Army Corps of Engineers (ACOE) will review the design and plan for the Sunset Boardwalk over the next 18-24 months. With an ACOE-approved design

and permits, the Sunset Boardwalk will be constructed within 12 months of permitting or as soon as practicable and could open in late 2023/ early 2024.

The Sunset Boardwalk is intended to be a pedestrian boardwalk that provides access over Sarasota Bay and connects with the natural shoreline, Mangrove Bayou walkway and other walkways in the park. The boardwalk is NOT a dock or a pier. NO motorized boats will be allowed to tie up to the boardwalk. NO fishing will be allowed from the boardwalk. NO dogs or other pets (excluding service animals) will be allowed on the boardwalk. NO micro-mobility devices (excluding mobility chairs/scooters for disabled persons) will be allowed on the boardwalk.

- Public Boat launch and surrounding docks: All areas will comply with applicable City codes.
- Programming and Activation: BPC will primarily be responsible for the activation and programming in The Bay Park. All activation and programming will comply with the City's ordinances and policies. BPC will coordinate calendars with other organizations and venues on the site.

Bay Park ongoing activities and programs will include, but not be limited to, arts/cultural/educational, fitness/health/recreation programs and other public park activities.

- Special Events: The City shall retain responsibility for the approval and conduct of Special Events, as defined in the City's Special Events policies and procedures and provided for in the LTPA. In the future, as the City and BPC gain experience with Special Events in The Bay Park, the City, at its discretion, may delegate approval and management responsibility to the BPC.

Note: There is currently only one city-approved Special Event at The Bay Park planned for 2022.

The City will process Special Event applications for the BPC as it does for other City-sponsored events. The BPC will issue and approve normal park permits and permits for events not categorized as "Special Events" for The Bay Park in accordance with City Parks and Recreation policies.

- State of Emergency and Emergency Management: BPC will be responsible for preparing and securing The Bay Park site in accordance with policies and procedures employed by other city parks.
- Traffic Management: City and State will continue to manage city streets and state highways adjacent to the park. BPC will manage roadways, coordinate and manage MURTs and walkways in the park, including safety measures, speed limits, et al.

At the City's request, BPC will:

1. Review and approve any/ all food and beverage provider agreement(s) for The Bay Park.
2. Review and approve the renewal of and any changes to City leases in The Bay Park, including the Sarasota Garden Club and the Art Center Sarasota; but excluding the Sarasota Orchestra, the Van Wezel and the new Sarasota Performing Arts Center.

Note: The Chidsey and Coast Guard Auxiliary buildings owned by the City are unoccupied and in need of repair. Their future viability will need to be resolved to the satisfaction of both parties.

3. Propose separately a plan for transitioning the programming of Municipal Auditorium (including the Bay Community Center) and the adjacent lawn to the north from the City to the BPC. The City will continue to provide capital improvements, maintenance and repair, utilities and other necessary support for the Municipal Auditorium building.



1. BAYFRONT OVERLOOKS X5
 2. FISHING PIER
 3. STAIRS*
 4. SEATWALL*
 5. HAMMOCK GROVE*
 6. SMALL WETLAND BRIDGES*
 7. SWING NODE*
 8. CABBAGE PALM NODE*
 9. TWIN OAK NODE*
 10. PARKING, DROP-OFF, AND PARK LOADING
 11. OVAL LAWN AND TERRACES
 12. COMMUNITY PAVILION AND SHADE STRUCTURE
 13. MANGROVE PEDESTRIAN BRIDGE
 14. LAWN NODE X2
 15. "COMMON GROUND" LAWN
 16. READING ROOM
 17. PLAY GROVE
 18. NEST NODE
 19. BEACH NODE
 20. BEACH
 21. BAYFRONT CORNER SIGN + SEATWALL
 22. RENOVATED HAZZARD FOUNTAIN
- * COMPLETED IMPROVEMENTS

BAY PARK PHASE 1 + 2
Current and Future Improvements
August 2021



EXHIBIT D

Naming Rights Policy (Policy) Draft – 9/14/21 Draft

ADDENDUM TO PARTNERSHIP AGREEMENT

WHEREAS, the parties hereto entered in to the Partnership Agreement on April 24, 2019; and

WHEREAS, the parties believe a specific Naming Rights Policy is in the best interests of the park being developed;

NOW, THEREFORE THE PARTIES STATE AS FOLLOWS:

1. Description of Property and Improvements Affected by the Policy. The Naming Rights Policy (“Policy”) shall pertain to all properties and improvements existing, planned or developed in the future on the 53-acres of City of Sarasota-owned bayfront property (whose boundaries are as follows: the north boundary as the Public Boat Launch, US 41 to the east, and the southern boundary of Boulevard of the Arts) that are encompassed by the Master Plan adopted on or about September 6, 2018 (“Bay Park”), but excluding:
 - a. Arts Center
 - b. Blue Pagoda
 - c. Chidsey Library Building
 - d. New Performing Arts Center
 - e. Municipal Auditorium
 - f. Sarasota Garden Club
 - g. Sarasota Orchestra Building / Holley Hall
 - h. Van Wezel Performing Arts Hall

2. Guiding Recognition Principles of the Naming Rights Policy.
 - a. The Policy adopts a series of Guiding Recognition Principles that will guide if or when naming features or improvement are appropriate. These Guiding Recognition Principles are as follows:
 - i. Naming any feature, area or improvement at the Bay Park, as a rule, is not desired.
 - ii. All gifts for the Bay Park, gifts will be formally recognized, and donors appreciated, through methods such as traditional media, print media, social media, listing in a group acknowledgement, website, letters, etc.
 - iii. If any naming of a feature, area or improvement at the Bay Park is done, it shall be done so very sparingly as an exception (“Exception Naming Right”).
 - iv. Any Exception Naming Right that is desired must be in concert with the Master Plan Guiding Principles, adopted by the City of Sarasota Commission on February 17, 2015 attached as Exhibit A and are: aspirational, connected and accessible to all, green and blue oasis that is environmentally sustainable, cultural vitality, an enlivened destination, and economically sustainable.

- v. Any Exception Naming Right must be in harmony with Bay Park Design and Planning Guidelines as designated by the Bay Park Design Team.
 - vi. Any Exception Naming Right shall consider park attendees' experience first and foremost, and prioritize a non-labeled in-park experience rather than acknowledging a person(s), organization, etc.
 - vii. Any Exception Naming Right shall be in scale, design and harmony with the overall Master Plan Design and intended uses.
 - viii. Any Exception Naming Right shall be named for a person or entity of good and moral character and whose personal, public or professional activities are harmonious with the Guiding Principles and Bay Park Conservancy Values.
- b. Application of the Policy. Exception Naming Rights may be sought for features or areas based on substantial commitments to capital funds, operating funds and/or endowment funds. Such commitments shall be as follows:
- i. Capital donation of \$1 million over three years, plus 25% additional to be applied to the Bay Park Endowment.
 - ii. Operations donation of \$1 million over three years, plus 25% additional to be applied to the Bay Park Endowment.
3. Process for Exception Naming Rights Consideration.
- a. Application for Exception Naming Rights. An Exception Naming Rights Application (Application) shall be submitted to the Bay Park Conservancy on its application form. Information to be provided include: funding entity / donor name; amount of gift; contribution schedule; demonstration of funds availability; naming requirements; conditions for giving, if any.
- b. Review of Application.
- i. All completed Applications shall be reviewed by the Naming Rights Review Ad Hoc Committee (Committee) comprised of:
 - 1. The Bay Park Conservancy Chief Executive Officer or CEO's designee
 - 2. City Manager or Deputy City Manager of the City of Sarasota
 - 3. City Attorney of the City of Sarasota
 - 4. The Bay Park Conservancy Board of Directors Chair
 - 5. The Bay Park Conservancy Advancement Director or the Bay Park Conservancy CEO or Board Chair designee, should there not be an Advancement Director.
 - ii. The Committee may, at its sole discretion, refuse to accept any application that does not meet all of the Guiding Recognition Principles.
 - iii. The final recommendation of a naming opportunity shall be made by supermajority of the Committee.
 - iv. The final decision of the naming opportunity is delegated by the City of Sarasota to the Bay Park Conservancy Board of Directors so long as any decision as to naming falls within this policy.
 - v. Any deviation from this Policy required approval by the Manager of the City of Sarasota.

EXHIBIT E

Draft: Public Art Policy at The Bay Park

4. **Description of Property and Improvements Affected by the Policy.** The Public Art Policy (“Policy”) shall pertain to all properties and improvements existing, planned or developed in the future on the 53-acres of City of Sarasota-owned bayfront property (whose boundaries are as follows: the north boundary as the Public Boat Launch, US 41 to the east, and the southern boundary of Boulevard of the Arts) that are encompassed by the Approved Master Plan adopted on or about September 6, 2018 (“Bay Park”), but excluding:
 - a. Arts Center Sarasota
 - b. New Performing Arts Center
 - c. Sarasota Garden Club
 - d. Sarasota Orchestra Building / Holley Hall
 - e. Van Wezel Performing Arts Hall

(These are tenants who have their own art and their own ideas of what should be on their site.)

5. **Guiding Principles of the Public Art Policy.** The Policy adopts a series of Public Art Principles that will guide if or when permanent public art is proposed for installation. These Guiding Principles are as follows:
 - a. As the Bay Park is a public park, and some customary park features may be considered “art” or “public art,” the Bay Park Conservancy must ultimately decide what code-compliant improvements are made at the Bay Park.
 - b. As in all Bay Park improvements, any public art must be in harmony with the Master Plan Guiding Principles, adopted by the City of Sarasota Commission on February 17, 2015, attached as Exhibit A and are: aspirational, connected and accessible to all, green and blue oasis that is environmentally sustainable, cultural vitality, an enlivened destination, and economically sustainable. Determination of harmony with the Master Plan Guiding Principles shall be exclusively determined by the Bay Park Design Team and the Executive Management Team of the Bay Park Conservancy.
 - c. Any public art selected for installation will be solely determined and selected by the Bay Park Design Team and the Executive Management Team.
 - d. All installations will be installed in accordance with all applicable City standards for any temporary or permanent installations. All installations will be guided by a professional engineer and/or general contractor to ensure durability, demands of our environment, lighting, safety and longevity.
 - e. Any public art must be available for viewing by any Bay Park visitor at no cost and may not be privately displayed away from public view.

- f. No organization, body or individual shall have any influence or decision-making power or selection of what art is provided on The Bay Park except as delineated above.
- g. Any public art shall be acquired, installed and maintained at the sole cost of the Bay Park Conservancy.
- h. The Bay Park Conservancy may establish additional public art guidelines and standards, but none shall conflict with the aforementioned Guiding Principles.

EXHIBIT F

Draft: Construction Contracts at The Bay Park

Contractor (Name) hereby releases and shall indemnify, defend and hold harmless the City of Sarasota, its elected officials; its officers, employees, agents, authorized representatives, successors and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Construction Contract and in any manner directly or indirectly caused, occasioned or contributed to in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence, whether active or passive, of Contractor, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Construction Contract.

Contractor's aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified or held harmless. Contractor specifically waives any immunity provided against this indemnity by any industrial insurance or worker's compensation statute. Contractor further agrees that this covenant to indemnify, defend and hold harmless the parties released shall not be limited to the limits or terms of insurance required under the terms of this Construction Contract. This indemnification and hold harmless provision shall survive the expiration of this Construction Contract or any termination hereof

EXHIBIT G

ARTICLE IX Conflict of Interest Policy

A. Purpose. The purpose of the conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit, directly or indirectly, the private interest of an Officer or Director of the Corporation or result in an excess benefit transaction as defined in Internal Revenue Code Section 4958. This policy is intended to supplement but not replace any applicable federal or state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

B. Definitions.

(1) Interested Person. Any Director, Officer, or member of a committee with Board delegated powers who has a direct or indirect financial interest, as defined below, is an interested person.

(2) Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

(a) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, or

(b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. A financial interest is not necessarily a conflict of interest. Under paragraph C(2) of this Article IX, a person who has a financial interest has a conflict of interest only if the Board of Directors or appropriate committee decides that a conflict of interest exists.

C. Procedures.

(1) Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature and all material facts to the Board of Directors or committee members considering the proposed transaction or arrangement.

(2) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after discussion with the interested person, he or she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

(3) Procedures for Addressing Conflicts of Interest.

(a) An interested person may make a presentation at the Board or committee meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

(b) The Chairperson or committee chair shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or management.

(c) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested Directors or committee members whether the transaction or arrangement is in the Corporation's best interest, for its own benefit and whether the transaction or arrangement is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

(4) Violations of the Conflicts of interest Policy.

(a) If the Board or committee has reasonable cause to believe that an interested person has failed to disclose an actual or potential conflict of interest, it shall inform the interested person of the basis for such belief and afford the interested person an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the response of the interested person and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

D. Records of Proceedings. The minutes of the Board, all committees, and advisory committees with Board-delegated powers shall contain:

(1) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(2) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed action or arrangement, and a record of any votes taken in connection therewith.

E. Annual Statements. Each Director, Officer or member of a committee with Board-delegated powers shall annually sign a statement which affirms that such person

(1) has received a copy of the conflict of interest policy;

(2) has read and understands the policy;

(3) has agreed to comply with the policy; and

(4) understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish 011e or more of its tax-exempt purposes.

F. Periodic Reviews. To ensure that the Corporation operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

(1) whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining; and

(2) whether partnerships, joint ventures, and arrangements with management service organizations conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further the Corporation's charitable purposes and do not result in private inurement, impermissible private benefit or in an excess benefit transaction.

G. Use of Outside Experts. In conducting periodic reviews provided for herein, the Corporation may, but need not, use outside advisors as approved by the Board of Directors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.