

**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 3rd day of January, 2022. 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 on February 17, 2015; and,

**WHEREAS**, the City Commission agreed to the formation of a planning committee, 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 9, 2018; and,

**WHEREAS**, on March 8, 2021 the City Commission approved a Site Plan for the first phase of the park which is currently being developed; and,

**WHEREAS**, the approved Master Plan and Phase 1 Site Plan are intended to guide the transformation and development of the site into an iconic city park to be known as The Bay Park with development to occur generally over the next ten 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**, 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**, City and the BPC have demonstrated a track record of partnership under the existing terms of this Partnership Agreement ("PA"), and have learned what works well in the current PA to further this common goal, and what 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 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 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, 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.
  2. BPC shall prepare all applications for development approvals required to construct The Bay Park and shall file such applications with City. City (or its contractors) may separately initiate improvements that align with the Guiding Principles and the approved Master Plan. 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. 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 to the public. 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.

9. BPC shall collaborate with the City's Grant Coordinator throughout the pre-application, submittal, reporting, reimbursement, and closeout periods of all grants awarded in the City's name and adhere to the City's Grants Policy and Procedures. BPC will ensure Grants Coordinator has information needed to maintain a master file for auditing purposes. All grants awarded in the City's name must be presented and approved by the City Commission and a corresponding budget must be established. If a match is a part of the Grant award, the match must be verified by the City's Finance Director and deposited in a project specific account with the City of Sarasota. All project payments must run through the City's general ledger. If City is to act as a pass-through by accepting the grant award, City shall distribute and reimburse the BPC. All grants awarded in the BPC's name will be deposited upon receipt, reported to the BPC board, included in the appropriate capital improvement or operating budget, and audited with BPC annual financial statements.
- 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 and right-of-way delineations for all construction of The Bay Park to City.
  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. BPC shall comply with the applicable provisions of the City's Procurement Code regarding concession agreements and leases with third parties. However, alternatively, BPC is authorized to develop a proposed written process for competitive selection of concessionaires and leases with third parties. 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.
  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 City.

3. BPC will implement its Naming Rights Policy appended to this Agreement as **Exhibit D**.

## **5. General Responsibilities of City:**

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

- A. City shall collaborate with BPC to process the approval and permitting, related to the implementation of the approved Master Plan in a cost-effective, expeditious, and efficient manner.
  - B. City shall make City staff available to BPC 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, 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 the implementation of the approved Master Plan. BPC shall coordinate with the appropriate City departments regarding necessary infrastructure upgrades to accommodate the approved Master Plan.
1. Potable Water, Reclaimed Water and Sanitary Sewer Capital Improvements and Costs: City shall be responsible for all offsite capital improvements and costs necessary for the Bay Park development. City also shall be responsible for the following onsite capital improvements and costs: 1) realignment of the existing, onsite 15-inch diameter sanitary sewer trunk main (within the existing parking lot and within the proposed footprint of the new Sarasota Performing Arts Center (SPAC) as shown on the Bay Park Master Plan – September 2018) to a new, City-approved, north/south alignment along Van Wezel Way and 2) upsizing and realignment of the existing 6-inch potable water main along Van Wezel Way (between the existing 12-inch PVC water main to the south and the existing water mains along 10th Street to the north) to a new, City approved north/south

alignment. The BPC shall be responsible for all other onsite potable water, reclaimed water, and sanitary sewer capital improvements and costs, including connection fees, impact fees, and meter installation fees. Consistent with paragraph 5.E above, the City shall reimburse the BPC for the cost of those facilities considered new basic infrastructure, including connection fees, impact fees, meter installation fees, and utilities normally provided in a basic park that is free and open to the public. This reimbursement shall include utility services to existing and new structures owned by the City (i.e. Chidsey Building, Municipal Auditorium, new Sarasota Performing Arts Center, etc.) The City will not reimburse for costs associated with facilities that generate revenue or are not free and open to the public. Offsite is defined as the area outside of the boundaries of the development. Onsite is defined as the area within the boundaries of the development.

2. Potable Water, Reclaimed Water and Sanitary Sewer Maintenance: City shall be responsible for the maintenance of all improvements up to and including the “point of service”. The “point of service” is defined as the meter(s) for potable water, the master meter (one master meter for the southern portion of the development area and one master meter for the northern portion of the development area) for reclaimed water, and the service lateral fitting on the sanitary sewer main for sanitary sewer. The Bay Park development shall be responsible for the maintenance of all other onsite potable water, reclaimed water, and sanitary sewer facilities. The City shall reimburse the BPC for the cost to maintain utility services to existing and new buildings owned by the City as noted in 5.E.1.
  3. Storm Water Capital Improvements and Costs: City shall be responsible for all offsite and onsite capital improvements and costs necessary for the Bay Park development.
  4. Storm Water Maintenance: City, or its designee (i.e. – Sarasota County), shall be responsible for the maintenance of all onsite stormwater improvements necessary for the Bay Park development.
- F. In the event the City Commission votes affirmatively to construct a new Sarasota Performing Arts Center (SPAC) and parking garage for the convenience of visitors to the SPAC, the BPC shall not be obligated to fund the construction of the SPAC 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,, utilities, landscape, and other maintenance. Security will be provided by the Sarasota Police Department (SPD) commensurate with coverage and patrols provided to the Bayfront Park. City shall undertake funding responsibility for municipal services in The Bay Park as it would any other municipal park. City will manage, enforce and receive all revenue associated with parking.
- 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 grants coordinator available to pursue grants and other funding opportunities and collaborate with The Bay's State lobbyists to garner support for

implementation of The Bay Park. City shall make its federal lobbyist available when contract is up for renewal in 2022 and collaborate on federal grant and appropriation requests.

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

### **A. Cooperative Funding**

1. Capital and Expense: City and BPC continue to fulfill their respective cooperative funding commitments to approved and permitted Bay Park development projects, and to ongoing management, operating, and maintenance expense.
2. Private and Public Funding: City and BPC's financial goals and strategy are delivering the funding needed to implement the approved Master Plan. City and BPC have a clear path to raising \$100 to \$150 million in capital to develop the entire 53-acre park, with about half of funding from private and half from public sources. As planned and previously committed, approximately 80% of Phase 1 is funded by private sources and 20% from public sources. City and BPC appreciate the leading role of foundations, philanthropy, and broad local community and business support. As a result, BPC has fully delivered on its commitment to finance all capital development and improvements, and BPC operations through Phase 1 from cash and firm commitments, and without any borrowing or debt.
3. 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 be responsible for the review and approval of all proposed capital project budgets to be completed using Tax Increment Revenue consistent with the Interlocal Agreement, to include significant capital funding in the future for The Bay Park and for a new Sarasota Performing Arts Center if/ when one is approved.
4. Future Funding Sources: Funding will continue to come from 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 private or sponsored 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 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 feasible, 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 capital improvements and repair of essential infrastructure, and basic 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 issue permits for 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**).

D. Public Art in The Bay Park

BPC will comply with the City's land development code governing public art in public parks. City staff will collaborate with and seek input from BPC on the City's Public Art Master Plan as it is created and developed. Any/ all temporary or permanent art considered for The Bay Park will be consistent with the Guiding Principles (**Exhibit A**), will conform with the approved Master Plan (**Exhibit B**), and will support The Bay's unwavering commitment to sustainability and timelessness, and high standards for design excellence and executional quality.

**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:**

City shall have the exclusive responsibility to negotiate and execute proposed leases with third parties and manage existing leases with the park. City may delegate the management of existing leases to the BPC upon renewal. Any renewal, whether by City or if delegated to BPC, shall be coordinated between the parties and shall conform to the approved Master Plan. 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. The BPC shall have exclusive responsibility to negotiate and execute proposed concessionaire agreements with third parties desirous of operating business to serve park visitors, exclusive of any such agreements within the Van Wezel and future SPAC. The BPC shall comply with the applicable provisions of the City's Procurement Code regarding the process for competitive selection of qualified third parties. BPC is authorized to develop a proposed written process for procurement and competitive selection of third parties that desire to operate a business to serve park visitors. 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.

#### **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 City in substantially the form reflected in **Exhibit E** 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 City. BPC, in consultation with City staff, shall develop a policy to encourage the use of minority and 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, consistent with the minimum insurance requirements of any vendor or entity doing business with City; which includes but is not limited to bodily injury, property damage, and personal coverages, with limits of not less than One Million Dollars (\$1,000,000) combined single unit per occurrence, Two Million Dollars (\$2,000,000) per location aggregate plus property damage insurance in the minimum of Five Hundred Thousand Dollars (\$500,000) 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. 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 City is in an additional insured. Insurance requirements applicable to third party lessees or concessionaires shall be consistent with the insurance requirements of any vendor or entity doing business with City and 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 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. 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 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 City.

#### **11. Government in the Sunshine Law:**

Because the primary goal of BPC is to assist 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 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 City shall advise the two *ex officio* directors 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 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 City). If City does not possess the requested records, City shall immediately notify BPC of the public records request, and BPC shall provide the records to 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 City.

Upon the completion, termination or expiration of this Agreement, BPC shall transfer, at no cost, to 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 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of 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 1<sup>st</sup> 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 F**. 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 on or before May 15 of each year 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.

**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 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 City or majority vote of the Board of Directors to terminate in 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:**

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 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 3<sup>rd</sup> day of January, 2021 by the City of Sarasota, Florida.


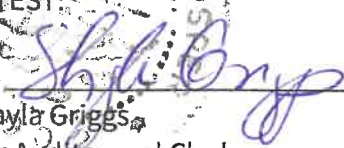
DATED this 22<sup>ND</sup> day of DECEMBER, 2021 by The Bay Park Conservancy, Inc.

**CITY OF SARASOTA, FLORIDA**

By: 

~~Helen Brady~~, Mayor

**Erika Arroyo**

  
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 22<sup>ND</sup> day of DECEMBER, 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



SARASOTA BAYFRONT  
PLANNING ORGANIZATION

### Mission

The mission of The Bay is to present a vibrant, comprehensive, long-term master plan 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**  
**Approved Bay Park Master Plan**



*theBay*  
SARASOTA

**APPROVED MASTER PLAN**

## EXHIBIT C

### Bay Park Implementation Agreement

This Implementation Agreement ("IA") is an exhibit to the Second Amendment to the Partnership Agreement between the City of Sarasota, a political subdivision of the State of Florida ("City") and the Bay Park Conservancy, Inc. ("BPC") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**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 (Site"); and,

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

**WHEREAS**, the City approved the Master Plan ("approved Master Plan") on September 6, 2018; and,

**WHEREAS**, the SBPO subsequently became the BPC; and,

**WHEREAS**, the City Commission approved a Partnership Agreement ("PA") between the City and the BPC on April 24, 2019; and,

**WHEREAS**, the City Commission approved a Site Plan for the first 10-acre phase of the Site on March 8, 2021; and,

**WHEREAS**, as part of the approved Master Plan and the Partnership Agreement, it was contemplated that there would be an agreement relating to implementation for the park as it is developed;

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

1. Recitals. The recitals set forth above are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. Purpose of Agreement. The primary purpose of this IA is to provide for the governance and joint management of the completed Bay Park by the BPC and the City as indicated in the PA. This IA applies to the first phase on the Site, as well as all subsequent phases on the site, including the entire 53-acre park. This IA is intended to be an integral part of the ongoing PA.

3. Scope. This IA addresses the management, operations and maintenance subjects identified and addressed in the PA signed on April 24, 2019 by Mayor Liz Alpert and BPC Board Chair Cathy Layton.

4. Principles. The IA affirms and enables the six guiding principles agreed to by the City, BPC and stakeholders in The Bay Park as included in the PA. The guiding principles enable:

- a. The conservation of city land for a public park;
- b. Environmental restoration, enhancement, and sustainability of land and water;
- c. Open, free, and welcoming access;
- d. 360-degree connectivity;
- e. An enlivened, activated and programmed public destination; and
- f. A financially and operationally sustainable park conservancy and public park.

5. Initial Management and Operations. 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.

6. Policies, Procedures, and Regulations. This IA establishes that BPC and the City will, at all times, in The Bay Park, comply with all applicable City ordinances, City Parks and Recreation policies and regulations, and City Special Events policies and procedures as they relate to the management and operations of a public park in the City of Sarasota. For example, the following sections 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, shall be complied with in the management and operations of The Bay Park. The IA includes the necessary operational policies to enable compliant and effective BPC management of The Bay Park.

In the event of a dispute between the parties as to the applicability of a City ordinance, policy, regulation or procedure or as to the interpretation of a City ordinance,

policy, regulation or procedure, the determination of City staff shall control, subject to review by the City Manager and the City Attorney. If a dispute remains unresolved after review by the City Manager and the City Attorney, then the Alternative Dispute Resolution procedure in paragraph 19 of the PA may be invoked by either party.

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

8. Streamlined Process. The IA references City and City Parks and Recreation ordinances, policies, and procedures, but does not excerpt or repeat their provisions so that the IA is a manageable guide to Bay Park operations that does 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 are addressed by the City outside of this IA.

9. Specific Practices. Clean, safe and well-maintained areas are best practices for well-managed and operated parks. The following are specific practices to be adopted at The Bay Park:

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

*Note: Per city ordinance and park regulations, 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 Plan (20-SP-04) and are available on The Bay Park website and social media and will be appropriately signed in the park. City will manage, enforce and receive all revenue associated with parking.

*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: 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, 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.*

- Solid Waste and Recycling Pick Up: Solid Waste and Recycling pick up will be provided by the City throughout The Bay Park on a daily or as-needed schedule. BPC will provide enhanced service as needed.
- Security: 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. Enforcement of parking regulations will be conducted by SPD and the Parking Management Division.
- Landscape Maintenance: Basic landscape 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 storm water, water and other utilities): Capital and maintenance of essential infrastructure will continue to be provided by the City, per the PA. 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. No private or ticketed events will be permitted for the boardwalk that would close the boardwalk to the public.

- Public Boat launch and surrounding docks: All public boat launch and surrounding dock areas will comply with applicable City codes.
- Programming and Activation: BPC will primarily be responsible for the activation and programming in The Bay Park, excluding events and/or performances related to the existing Van Wezel, future SPAC or any existing leases as of date of this Agreement's execution. 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 PA. For purposes of this Agreement, the term "city services" in the context of the definition of "special events" in the City Code and in the context of the City's Special Events policies and procedures shall include any services that are provided by the BPC. 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 subject in compliance with applicable City regulations. 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.

*Note: There are currently only two city-approved Special Events at The Bay Park planned for 2022.*

- 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 for emergency management.
- Traffic Management: City and the State of Florida will continue to manage city streets and state highways adjacent to the park. BPC will manage roadways within The Bay Park, coordinate and manage MURTs and walkways in the park, including safety measures, speed limits, et al.

10. City Requests. At the City's request, BPC will:

- a. Review and approve any/ all food and beverage provider agreement(s) for The Bay Park excluding events and/or performances related to the

existing Van Wezel, future SPAC or any existing leases as of date of this Agreement's execution.

b. 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.*

c. Propose separately a plan for transitioning the programming of the Municipal Auditorium, including the Bayfront 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.

11. Provisions of the PA. All provisions of the PA, including those Alternative Dispute Resolution and Notice, are expressly adopted within **Exhibit C** of the Second Amendment to the Partnership Agreement between the City of Sarasota and the Bay Park Conservancy, Inc

## **EXHIBIT D**

Naming Rights Policy (BPIB approved 10/25/21)

### **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 Sarasota 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.
      - 6. Sarasota County Administrator or Deputy County Administrator
      - 7. Sarasota County Attorney or Sarasota County Attorney Designee
    - 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**

### **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 and any termination hereof.

## EXHIBIT F

### 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 one 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.