

**PARTNERSHIP AGREEMENT BETWEEN
THE CITY OF SARASOTA AND THE BAY CONSERVANCY, INC.**

This Partnership Agreement ("Agreement"), dated this _____ day of _____, 2019 ("Effective Date"), is between the City of Sarasota ("City") and The Bay Park Conservancy, Inc. ("BPC") (collectively, "the Parties").

WHEREAS, BPC is a charitable non-profit organization dedicated to conserving, improving, and managing the 53 acres of City-owned land on the Sarasota Bayfront as co-investors and in partnership with the City of Sarasota and the community, to enrich the quality of life for all Sarasota residents and visitors, to bring the community together in a world class park on Sarasota Bay; and

WHEREAS, the real property comprising The Bay Park (particularly described on Exhibit A attached hereto and made a part hereof, hereinafter defined to be "The Bay Park") is owned, operated and maintained by the City in accordance with city code, city policies, city procedures and well-established development, parks and recreation management practices; and

WHEREAS, the City and BPC have created a cooperative collaboration with each other for the purpose of co-investing in the Master Plan for The Bay Park adopted by the City on September 6, 2018 ("Master Plan"); and

WHEREAS, the City, BPC and its predecessors, Sarasota Bayfront Planning Organization, Inc. (SBPO) and Bayfront 20:20 have been working together collaboratively for five years beginning with an agreed upon community vision and guiding principles, continuing with the establishment of a volunteer citizen planning board that included the City Manager, and resulting recently in the approval of the Master Plan for The Bay Park, as well as approval of an implementation plan for the first 10 acres and a governance recommendation to establish a park conservancy supported by a financial strategy and funding plan for the first three years of BPC operation; and

WHEREAS, the City wishes to continue its relationship with BPC and facilitate BPC's work at The Bay Park by creating a formal cooperative relationship with BPC by way of this Agreement;

WHEREAS, the purpose of this Agreement shall be to establish the framework for the process by which The Bay Park shall be planned, designed, funded, built, operated and maintained, as well as the ongoing governance structure through all phases of implementation, operation and maintenance of The Bay Park; and

WHEREAS, the City and BPC will operate in the spirit of good faith and cooperation, with certain authority and decision-making delegated to BPC to avoid duplication of costs, redundancy and promote the most efficient and sustainable use of resources for The Bay Park; and

WHEREAS, the City and BPC recognize that The Bay Park improvements will be planned, designed, funded and built out in phases over a period of approximately 15 years, with a combination of private and public funding sources;

NOW, THEREFORE, in consideration of the mutual promises presented herein, the expenditures in the past and future in furtherance of these purposes and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. Goals of BPC

- A. Operate as the exclusive design, planning, development, funding, operating and sustainability partner entrusted by the City, through a public/not for profit partnership of coordinated collaboration with the City, for the implementation of the Master Plan through development, funding, operations and maintenance of The Bay Park.
- B. Design and implement phases for The Bay Park approved by the City and in accord with the principles of accessibility, diversity and inclusion, and environmental and financial sustainability.
- C. Incorporate sustainable design best practices, including softening the shoreline, meeting or exceeding current FEMA standards, and effective renewable energy and storm water treatment strategies for The Bay Park.
- D. Continue the proven community outreach engagement process that allows for community collaboration and input.
- E. Maintain free, public access to the majority of The Bay Park with only a select, small portion occasionally being available at certain times for private events, paid public events, etc.
- F. Establish a public/not for profit funding model in conjunction with the City that employs both public and private philanthropic funding for capital projects, operations and maintenance of The Bay Park that builds on, implements and executes the financial plan for Phase 1 and the long term financial strategy for The Bay Park.
- G. As The Bay Park is built in phases, activate each phase of The Bay Park in the way that most benefits the community and provides access for all people in Sarasota.
- H. Continue a long-term branding and marketing strategy for The Bay Park to include communications to the public, neighbors, donors and stakeholders.

II. Term

The initial term of this Agreement shall be fifteen (15) years, to coincide with the time estimated to transform mostly surface parking into green space and park land, from the Effective Date (“Term”) unless otherwise terminated as provided herein. This Agreement shall automatically renew for successive fifteen (15) year terms (each a “Renewal Term”) unless either party delivers written notice of their intention to terminate. Either party may terminate this agreement at the conclusion of the initial term or any renewal term, by a majority vote of the governing body that desires to terminate the Agreement, and by providing written notice no later than 10 months prior to the expiration of the initial term or any renewal term. If notice is timely provided, the termination shall be effective as of 10/1 in the year after the notice of intention to terminate was provided.

III. General Agreements for the Working Relationship

The following is a list of agreements between the City and BPC as to their working relationship established by this Agreement:

- A. The City shall always maintain sole and exclusive ownership of The Bay Park;
- B. The City shall maintain sole and exclusive authority to make all final decisions regarding The Bay Park and shall exercise this authority in the spirit of good faith cooperation in partnership with the BPC as co-investor of The Bay Park;
- C. The City shall continue to make policy and establish processes for developing, operating, and maintaining its parks and BPC will follow all established City policies and practices for the development, operations and maintenance of The Bay Park;
- D. The Master Plan, adopted and approved by the City on September 6, 2018, shall govern the work at The Bay Park unless and until the same is modified, replaced or abandoned by mutual agreement of the parties;
- E. BPC and the City shall work together to develop and/or update project goals for The Bay Park;
- F. Project management and Park improvement decision-making will be done collaboratively in accordance with agreed upon construction standards and the Master Plan;
- G. BPC and the City will continue to collaborate regularly and at appropriate intervals for annual and long-term planning for The Bay Park;
- H. The Master Plan will be developed in phases and each phase will include a budget, final design and detailed funding and implementation plans;

- I. BPC and the City will collaborate on an efficient and effective process whereby each phase of the development is required to obtain site and development plan approval from the City Commission;
- J. The City will waive permit fees, where permissible, that do not involve hard costs, excluding impact or connection fees;
- K. BPC and the City will be defined as co-applicants for the site and development approval process;
- L. Title to all of BPC's improvements of such a nature as cannot be removed without substantial damage, or some portion thereof, shall vest in the City upon completion of construction or installation;
- M. BPC and the City will work together with Sarasota County to establish a Tax Increment Financing (TIF) district. This district, along with multiple additional public and private funding sources, grants, and other donations, will help fund The Bay Park and related improvements;
- N. Other government and public/private and philanthropic entities may contribute to the creation, improvement, operations and endowment for The Bay Park and all gifts will support the Master Plan and be subject to review and approval by BPC;
- O. BPC and the City will work jointly to prepare applications for grant opportunities for The Bay Park;
- P. The City and BPC shall not discriminate based upon race, creed, color, religion, sex, national origin, marital status, age, physical handicap, sexual orientation, or gender identity in the implementation of the Master Plan or this Agreement;
- Q. BPC and the City will partner to manage operations and maintenance during the implementation phases, as well as over the long term, for The Bay Park;
- R. BPC and the City will create parking rules and regulations for surface and street level parking, as well as parking design, rules and regulations for the Boulevard of the Arts west of US 41. The City will create rules and regulations for any garages onsite at The Bay Park, with input from tenants/users such as the Performing Arts Center, and work collaboratively with BPC;
- S. BPC and the City will collaborate on a food and beverage policy for The Bay Park;
- T. BPC and the City will partner to set policies for hours of operation, noise and all other decisions related to the safe and effective operation and management of The Bay Park, for approval by the City;

- U. BPC will collaborate with the City's General Manager of Purchasing to develop a competitive selection process that will reflect the City's procurement procedures;

IV. City Responsibilities

The City shall have the following responsibilities:

- A. The City will review BPC development applications, by phase, in accordance with City Zoning and Comprehensive Plan requirements;
- B. Allocate and budget, when applicable, capital, operating and maintenance funding for The Bay Park as part of the City's annual budget process;
- C. Maintain normal funding responsibility for construction and maintenance of all basic infrastructure for The Bay Park, including, for example, streets, paths, sidewalks, utilities, storm water treatment systems, roundabouts, overpasses, boat launch ramp, parking and parking garages (funding for any of the above may be shared by the City with other sources such as FDOT);
- D. Maintain funding for basic operations and maintenance for The Bay Park, for example, trash pick-up, basic maintenance, litter control, security, sanitation services, restroom cleaning, and utilities. The City shall provide a letter reflecting those commitments to BPC upon request for fundraising purposes;
- E. Maintain basic event oversight until responsibility for event oversight is transferred to BPC at the completion of each phase of The Bay Park;
- F. Grant use of space for BPC offices and operations at no cost to BPC except that BPC shall be responsible for routine maintenance and operations of the space including insurance. The value of said space shall be recognized as an in-kind contribution of the City;
- G. Make the City's federal lobbyist available to BPC as reasonably needed as an in-kind contribution;
- H. Make the City's grant writer available as reasonably needed as an in-kind contribution;
- I. Assign responsibility for granting naming rights of all elements at The Bay Park, other than the naming rights for the entire 53-acre site itself, any buildings existing as of the Effective Date, and the new Performing Arts Center, exclusively to BPC. For the entire site, existing buildings and the new Performing Arts Center, the City shall have ultimate approval rights but shall consider BPC's recommendations for naming rights;

- J. Provide a letter to BPC or any potential donor, upon request, confirming that, in accordance with this Agreement, BPC has the authority to manage and perform capital construction projects, maintenance, and operations at The Bay Park, and to raise funds for the same;
- K. Use all commercially reasonable efforts to ensure that all funds committed by the City to The Bay Park are used effectively, efficiently, and as intended;
- L. Provide basic police services for The Bay Park as determined by the Chief of Police or his/her designee in her/his sole discretion. BPC may provide funding for enhanced security;
- M. Delegate routine operational decisions regarding The Bay Park in accordance with City codes and policies. If no City code or policy exists, BPC will make a recommendation for City review and approval;
- N. Transfer to BPC, as of the Effective Date, all concessions, licenses and permits at The Bay, excluding those managed by the Van Wezel/PAC and/or the Sarasota Orchestra;
- O. Provide feedback through City Staff, and if appropriate, provide decision on, any and all submissions by BPC within thirty days of receipt thereof. In the event that the approval process as governed by City Code requires full Planning Board and/or City Commission approval, this thirty-day time limit shall not apply, but the City will not unduly delay approval;
- P. Request to be updated by BPC on all work performed at The Bay Park, including but not limited to projects, construction of capital improvements, landscaping, and other initiatives, if the City believes an update is necessary, recognizing that the BPC Board includes City members and typically meets monthly or more frequently. Additionally, BPC will provide an annual report to the City regarding the above;
- Q. Suspend a project being performed by or on behalf of the BPC if, in the City's reasonable determination, the project creates a safety hazard or is not being performed in accordance with the Master Plan or other City codes or ordinances. If a project is suspended, the City and BPC shall convene as soon as practicable to resolve the issue; and
- R. Be responsible for any claim, damage, loss or expense arising from The Bay Park that is attributable to intentional or negligent acts, errors, or omissions by the City.

V. **BPC Responsibilities**

BPC shall have the following responsibilities:

- A. Remain a 501(c)(3) with a Board of Directors comprised of between 7-15 members, which shall include two City ex-officio, non-voting members (one as appointed by the City Manager, and one to be the Mayor or a City Commission appointee by the Mayor), and one ex-officio, non-voting member from Sarasota County;
- B. Function under Florida Sunshine law and continue to be transparent about operations;
- C. Act as stewards for The Bay Park, promoting, preserving and encouraging the best operation and use of The Bay Park to serve the community;
- D. Lead, in partnership with the City, the design, construction, activation, operation and maintenance of all aspects of The Bay Park;
- E. Create an environmentally friendly design that will include, but is not limited to, green spaces, lighting, native plant landscaping, consistent with the Master Plan;
- F. Prepare a Master Plan implementation schedule, by phase, to be updated annually;
- G. Recommend appropriate changes to the City for policies and procedures specific to The Bay Park;
- H. Develop construction standards and specifications that support and implement a standard of excellence in the Master Plan;
- I. Prepare project proposals and implementation plans for improvements and other initiatives at The Bay Park based on available and anticipated funds, and in accordance with the Master Plan;
- J. Submit to the City quarterly construction progress reports;
- K. When new improvements are completed at The Bay Park, BPC will submit copies of "as built" drawings to the City for future reference;
- L. Determine any and all other governmental bodies and/or regulatory agencies from which approval must be obtained for all work at The Bay Park.
- M. BPC shall not begin actual work on projects, improvements or other initiatives, outside of the design and permitting process, until it has successfully completed the City's review and approval process, and it has received written approval from any other governmental body or regulatory agency from which approval is required;
- N. Actively pursue and engage in fundraising as the primary source of private, not-for-profit-philanthropic fundraising to support initiatives for enhancing The Bay Park;

- O. Organize, design, implement and/or support programming activities consistent with the Master Plan and this Agreement;
- P. Be the primary fundraising agent for The Bay Park consistent with the BPC Financial Feasibility plan to be updated annually, including conducting certain operations and/or capital campaigns, as well as public and private fundraisers, sponsorship programs and other revenue-generating events, in support of The Bay Park;
- Q. Oversee the use of all funds raised by BPC, making certain that the funds are utilized consistent with the Bay Park Master Plan, the BPC Financial Feasibility Plan, and this Agreement;
- R. Use all commercially reasonable efforts to ensure that all funds committed by or to BPC for use regarding The Bay Park are used effectively, efficiently, and as intended;
- S. Establish an endowment of which the corpus will remain with BPC and shall not pass to the City upon termination or expiration of this Agreement for any reason. The corpus and all income from the endowment will be exclusively for the use of BPC in connection with its mission and purpose. In the event the BPC terminates, these funds shall go to a mutually agreeable nonprofit foundation for use toward the Bay Park, or shall be expended in accordance with private donor restrictions if applicable;
- T. Be responsible for implementing the projects, improvements or other initiatives that have been reviewed and approved by the City as set forth herein;
- U. Lead all federal and state lobbying efforts for The Bay Park;
- V. Serve as the major catalyst for interested parties to be involved with The Bay Park through advocacy, volunteer, and/or fundraising activities;
- W. Create an annual plan with a schedule that allows for public and private funding through the capital improvement process;
- X. Provide regular updates, including an annual, year-end written report, or any time upon request, to the City Commission. BPC will present to the City Commission in person if requested;
- Y. Complete an annual audit by an independent Certified Public Accountant;
- Z. Maintain records and accounts in connection with the performance of this Agreement that accurately documents all funds received by BPC and all costs incurred by BPC, both direct and indirect, of whatever nature, at all times. The City

shall have the right to examine and copy the records and accounts at all reasonable times and further reserves the right to audit BPC's records and accounts;

- AA. Develop an operations and maintenance plan for each phase prior to completion of each phase;
- BB. Provide enhanced maintenance, in addition to the City's performance of routine maintenance, if BPC desires so that The Bay Park remains in a safe and attractive condition, and so that all capital improvements are adequately maintained to protect the investments made;
- CC. Prepare and submit to the City for review and approval an Operations and Maintenance Plan at each phase of construction that outlines transition, timing and management responsibilities of BPC for that phase;
- DD. Classify all employees and volunteers of BPC at The Bay Park to be "employees" or "volunteers" respectively of BPC, and not employees or volunteers of the City. Any personnel employed by or volunteering on behalf of the City shall be deemed "employees" or "volunteers" respectively of the City, and shall not be deemed employees or volunteers of the BPC;
- EE. Hire and train all BPC employees, contractors and volunteers;
- FF. Be responsible for the supervision, management and control of BPC employees and volunteers and any payroll, taxation or other employment obligation incident to their work;
- GG. Where practicable, use local (as defined by City ordinance) vendors/contractors for work performed at The Bay Park.
- HH. Where practicable, use contractors that are minority-owned businesses for work performed at The Bay Park to include diligent pursuit of the hiring of MBE/WBE contractors and employees consistent with City policy;
- II. Evaluate the use and management of all buildings, other than the Van Wezel and Sarasota Orchestra, on The Bay Park, and recommend their inclusion/exclusion in the final design, lease terms, building use and tenants;
- JJ. Develop a strategy for incorporating art into The Bay Park;
- KK. Coordinate with the Van Wezel and Sarasota Orchestra, Municipal Auditorium, and other relevant current and/or future tenants, a schedule of events for The Bay Park;
- LL. Develop a strategy and plan for managing concessions and sponsorships at The Bay Park, with proceeds going toward the maintenance and operations of the Park. The City shall assign any vending fees associated with concession sales to the Park.

- MM. BPC shall ensure that all revenues generated by concession sales shall be reinvested in The Bay Park improvements, operations and maintenance;
- NN. Provide supplemental security services at The Bay Park to augment the police services provided by the City and the Sarasota Police Department;
- OO. Notify the City within twenty-four hours of discovering a safety, sanitary, and/or maintenance issue that needs to be addressed at The Bay Park regardless of whether BPC intends to resolve the issue;
- PP. Notify the City within three hours or sooner of learning of any emergency event regarding or arising at The Bay Park that involves the media, the police or fire departments or emergency medical services;
- QQ. Maintain general liability insurance in the amount of \$1,000,000 bodily injury and property damage combined single limit, regarding all work performed at The Bay Park by BPC's employees, volunteers, contractors and subcontractors, including but not limited to demolition and construction work, vending and/or concession sales, and provision of security services through any private security service company. The City shall be covered as an additional insured under the general liability insurance policy, and such insurance shall be primary with respect to the additional insured and provide the City with a Certificate of Insurance and Endorsement to the policy listing the City of Sarasota as an additional insured;
- RR. Maintain Workers' Compensation insurance meeting statutory requirements that includes a waiver of subrogation in favor of the City
- SS. Be responsible for any claim, damage, loss or expense arising from The Bay Park that is attributable to intentional or negligent acts, errors, or omissions by BPC.

VI. Contractors Performing Work on the Park

- A. BPC shall require all contractors and subcontractors performing any work related to this Agreement to sign an agreement with BPC that includes the following indemnification provision, with the exception that the name of the contractor or subcontractor shall replace "Contractor" as used herein below:

"Indemnification and Hold Harmless Clause"

1. Releases and Indemnification:

Contractor hereby releases and shall indemnify, defend, and hold harmless the City of Sarasota, its elected officials, officers, agents, employees, 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 Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or 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 Agreement.

2. Negligence and Waiver

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 workers' compensation statute. Contractor further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and Hold Harmless provision shall survive any termination or expiration of this Agreement.

- B. The following insurance requirements must be met by every contractor and subcontractor that performs work related to The Bay for or on behalf of BPC, and shall be included in a contract between BPC and each of its contractors and subcontractors. Compliance is required by all contractors of any tier. Insurance requirements are based on information received as of the date of this Agreement. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Agreement.
- C. BPC shall not allow its contractors or subcontractors to commence any work of any kind pursuant to this Agreement until all Insurance requirements contained in this Agreement shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City.
- D. Any and all companies providing insurance required pursuant to this Agreement must meet minimum financial security requirements. If the issuing company does not meet minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to BPC, who shall promptly itself; or require its contractor to, obtain a new policy issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

1. Workers' Compensation Insurance

Every contractor and subcontractor that performs work related to The Bay Park for or on behalf of BPC shall procure and maintain Workers' Compensation Insurance in accordance with Florida Statutes including a waiver of subrogation in favor of the City.

2. Automobile Liability Insurance

Every contractor and subcontractor that performs work related to The Bay Park for or on behalf of BPC shall procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- Owned, Hired, Leased and Non-owned vehicles to be covered. In the event the contractor or subcontractor does not own any automobiles in the corporate name, non-owned and hire automobile coverage will be maintained in the amount indicated above.

3. The City shall be covered as an additional insured under any and all insurance required pursuant to this Agreement, with the exception of Workers' Compensation, and such insurance shall be primary with respect to the additional insured. Confirmation of this shall appear on the Certificate of Insurance and on any and all applicable Insurance policies.

VII. Suspension of Work and Alternative Dispute Resolutions (ADR)

A. In the event that the City determines that any work being performed at The Bay Park, or any failure to perform work at The Bay Park, is inconsistent with the Master Plan, this Agreement, and/or the project, improvement or initiative plans approved by the City, the City shall immediately contact the BPC in writing and shall articulate the corrective action required. The City shall state the number of days that the BPC shall have to implement the corrective action and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The City shall be reasonable with regard to granting extensions of time if the BPC indicates that it needs additional time and is making a good faith effort to implement the corrective action.

1) The BPC shall use all commercially reasonable efforts to implement the corrective action within the time set forth by the City in its written notice. In the event that the BPC needs additional time to implement the corrective action, it shall request an extension of time for a defined time period.

2) In the event that the BPC does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right to suspend the offending project until the corrective action is implemented, at no cost to the City.

3) In the event that the City and the BPC disagree about the corrective action to be implemented, the Parties shall attend Alternative Dispute Resolution ("ADR"), as defined herein, in an attempt to resolve the matter. The work at issue shall be suspended until the completion of the ADR.

4) Should the Parties be unable to resolve the corrective action issue after ADR, the City shall have the right to terminate this Agreement.

5) In the event that the City determines that any work being performed at The Bay Park creates a safety hazard, the City shall suspend the work immediately. The City shall immediately notify the BPC, in writing, that the work has been suspended and the corrective action required. The work shall remain suspended until the corrective action is implemented.

B. In recognition of the trust placed in this public-private partnership, the parties agree that any dispute or disagreement under this Agreement that is not able to be resolved during good faith collaboration by the parties shall be submitted to ADR by way of a written communication from either party. ADR under this Agreement shall be defined as: first, a meeting of the City Manager and BPC Executive Director to be convened as quickly as practicable along with any necessary follow-up meetings; second, if there is no resolution reached during ADR step 1, or upon the passing of 90 days from the date ADR was first invoked, the parties shall be deemed to be at impasse in which case the matter shall be placed on the agenda at the next available City Commission meeting and decided by the City Commission or their designee; third, if the City is unable to reach a decision to the satisfaction of the City, the City shall have the right to terminate this Agreement; finally, if BPC disagrees with the decision of the City Commission in ADR step 2, or if the City is unable to make a decision in accordance with this ADR process, BPC shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the City and BPC have caused this Agreement to be executed by their duly authorized officials, the day and year first above written.

CITY OF SARASOTA

THE BAY PARK CONSERVANCY, INC.

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

(Signed by Mayor and City Manager)

(Signed by Chairman)