



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782

Jimmy Morales, City Manager
Tel. 305-673-7010, Fax: 305-673-7782

October 1, 2018

George Lindemann, President
Friends of the Bass Museum, Inc.
2121 Park Avenue
Miami Beach, Florida 33139

Re: Agreement between the City of Miami Beach, Florida (the City) and the Friends of the Bass Museum, Inc. (the Friends) for the Continued Management and Operation of the Bass Museum of Art from October 1, 2018 to September 30, 2019.

Dear Mr. Lindemann,

The following letter agreement (the Letter Agreement or Agreement) shall confirm the understanding between the City and the Friends (each, a “Party, or collectively, the “Parties”), with regard to the Friends’ agreement to continue providing certain management and operational responsibilities at the Bass Museum of Art, located at a building (the Bass Museum building) owned by the City, having a street address of 2121 Park Avenue, Miami Beach, Florida (hereinafter the Bass Museum or the Museum), for a term commencing, retroactively, on October 1, 2018 (Commencement Date) and terminating on September 30, 2019 (the Term).

Background Regarding the Parties’ Overall Support for the Bass Museum

This Letter Agreement represents a portion of each Party’s contribution to the overall support of the Bass Museum and its programs, operations and facilities. Specifically, in addition to the contribution set forth in this Letter Agreement, during FY2018-19 the City shall continue to, among other commitments and contributions to the Bass Museum:

- (i) fund certain the salaries and benefits of two positions (as City employees) separately;
- (ii) provide for certain maintenance and repairs for the Museum building to be performed directly by the City through its Property Management Department, with any such repairs to be determined by the City in its reasonable discretion, with input from the Friends as to any applicable accreditation-related facility requirements;

- (iii) provide staff resources from time to time for the benefit of the Museum (such as Capital Improvements Office staff assistance in connection with the Bass Museum renovation project); and
- (iv) provide separate grants from time to time for specified purposes, such as a pending grant in the amount of \$100,000 for the purchase of outdoor café furniture, and a pending grant from the City's Cultural Arts Council for \$29,750.

Similarly, in addition to undertaking the management and operational responsibilities set forth herein, this Letter Agreement represents a portion of the significant support the Friends provides for the benefit of the Bass Museum, which support serves to enhance the cultural offerings available at the Bass Museum, including funding for temporary exhibitions at the Museum, fundraising activities, communications and public relations, and educational programming, the expenses for which are solely funded by the Friends, from funding sources other than the City funding provided for herein.

Administration, Operation and Maintenance of the Collection and the Building

In addition to the above-referenced support provided by the Friends for the benefit of the Bass Museum, throughout the Term, the Friends agree to provide the following services in support of the ongoing management and operation of the Bass Museum (hereinafter, such services are collectively referred to as the Services):

- Administer, operate, and maintain the John and Johanna Bass Collection (the Collection), as contemplated pursuant to the terms and conditions of that certain agreement between the City and John and Johanna Bass, dated July 8, 1963, as amended (the "1963 Bass Agreement"); as amended and restated on March 31, 2010 by that certain Amended and Restated Agreement between the City and Dennis Alan Richard, as successor in interest to John and Johanna Bass (the "Bass Agreement").
- Develop and implement exhibitions, programs, and activities which support and promote the goals and priorities agreed upon by the City and the Friends (including, without limitation, those which are consistent with and continue to further the purposes set forth in the Bass Agreement).
- Provide certain day-to-day administrative services in support of the Collection, as well as any and all other art work(s) in the Museum, and the aforesaid activities, to ensure that the Museum continues to be operated, managed, and maintained in a first-class manner, consistent with similar world-class public museums of comparable size and budget to the Bass Museum and including, without limitation, acquisition of services, equipment, and supplies; day-to-day housekeeping and maintenance; record-keeping; collections and billings; and similar services.

The Friends represent to the City that, prior to the commencement of the Term, its authorized representatives have inspected the Bass Museum building; accordingly, the Friends hereby accept the building “**AS IS, WHERE IS, AND WITH ALL FAULTS**” existing as of the Commencement Date.

In the event that any claim or controversy arises with respect to the Agreement, the Friends and the City hereby knowingly and voluntarily waive their rights to assert any argument or defense alleging inadequate or insufficient consideration.

City’s Contribution for the Services

The City agrees to pay the Friends the total amount of \$884,058 for FY2018-19 for the Services, which funds shall be used solely for expenses relating to the administration, operation, and maintenance of the Collection and the Museum building, as provided in the budget set forth in Exhibit A attached hereto (“Budget”). The Budget, which the City and Friends have mutually reviewed and approved, represents a portion of the annual operating budget of the Friends, and includes the categories of expenses related to the Services that will be funded with the City’s contribution, as outlined in this paragraph. The City and Friends hereby agree and acknowledge that said Budget is adequate for the provision of the Services for FY2018-19. With respect to the expenses outlined in Exhibit A, the Friends shall not exceed the Budget, which has been established at \$884,058.

City shall pay the Friends \$442,029 to the Friends upon execution of this Letter Agreement, with the remaining balance to be disbursed to the Friends following the submission of supporting documentation reasonably acceptable to the City verifying that City’s contribution herein shall be solely used to defray costs related to the administration, operation and maintenance of the Collection and the Museum building, pursuant to the Budget. Such supporting documentation shall include a list of Friends employees, with salary and benefit information, and other documents as may be requested by the City.

The Friends shall use best efforts to undertake, deliver and perform the Services, in accordance with, and in the amount provided by, the Operating Budget. The Friends agree to notify the City Manager within ten (10) days of any significant change or variance in the bottom line numbers in the Operating Budget, and any material increase in any identified cost(s) and/or expense(s) from that/those provided for in the Budget. Notwithstanding the preceding, or anything contained in this Agreement, the Friends shall not exceed, commit, or contract to expend any sum in excess of the aggregate amount allowed in the Budget without first obtaining the prior written consent of the City Manager, which consent, if granted at all, shall be in the Manager’s sole and reasonable judgment and discretion.

The Friends hereby commit to participate in City’s regular budget process, and agree to submit a proposed budget request for FY2019-20 no later than February 20, 2019, along with supporting documentation as may be requested by the City, to permit the City to

evaluate the Friends' funding request for FY2019-20. In furtherance of the foregoing, the Friends shall provide a line item budget to the City, identifying (i) proposed expenses to be funded by the City, (ii) proposed expenses to be funded by the Friends, and (iii) proposed expenses to be shared by the City and the Friends, along with a methodology for the proportionate allocations to the City and the Friends, respectively, for shared expenses. [Pending further discussions with the Friends]

The Friends shall pay all items of expense related to the Services (and subject to the amount indicated in the approved Budget) from JP Morgan (General Operating Account) #849186630. In addition to payment of any operating expenses related to the provision of the Services, any and all revenues generated by the Friends (pursuant to the duties set forth herein) shall also be deposited into this account. Deposits and/or withdrawals must be prepared by the Assistant Director and confirmed by the Executive Director. All checks exceeding five thousand dollars (\$5,000) require two signatures. Authorized signatories on the account are as follows:

- Executive Director;
- President of the Board;
- Vice-President of the Board;
- Secretary of the Board.

With respect to the Executive Director, the Parties acknowledge and agree that, notwithstanding any provision to the contrary in the Bass Agreement, at the request of the Friends, the City has continued to employ the Executive Director as a City employee, to accommodate the Director's pre-existing pension and related benefits.

The Friends agree to keep and maintain an office in the Museum devoted exclusively to its performance/provision of the Services. The Friends shall keep and maintain all records related to, and in support of, the Services at such office, and shall keep accurate and complete books and records of all receipts and expenditures of City funds provided pursuant to this Letter Agreement. Any financial records shall be maintained in accordance with generally accepted accounting principles, for at least four (4) years following the end of the fiscal year. The City Manager or his authorized designees shall have the right, at any time during the Term, to audit and inspect any and all Friends' records, upon reasonable written or verbal notice to the Friends, and during the Museum's normal hours of operation.

Other Terms

The Friends agree to maintain an updated inventory of the works that form part of the John and Johanna Bass Collection. As part thereof, the Friends agree to provide the City with a list of any works that may have been acquired or donated in the name of the Friends of the Bass, Inc., whether any such works have been formally accessioned into the Bass Collection, and if accessioned, the date the work was accessioned as part of the Bass Collection. With respect to any works for which title is held in the name of the Friends of the Bass, Inc., the Friends agrees to provide the City with supporting

documentation as to how the Friends propose to allocate the pro rata costs of the maintenance, preservation, storage and insurance for any such works.

The City and the Friends shall each appoint a contract administrator who shall monitor the parties' compliance with the terms of this Agreement and, in the case of the Friends, who shall serve as the point person for the City with regard to the Services. Unless otherwise notified, the contract administrators for each party are as follows:

For the City:
City of Miami Beach
Tourism, Culture and Economic Development
Attn: Brandi Reddick
Cultural Affairs Program Manager
1700 Convention Center Drive
Miami Beach, Florida 33139
305-673-7577

For the Friends:
Friends of the Bass Museum, Inc.
Attn: Silvia Karman Cubina
Executive Director/Chief Curator
2100 Collins Avenue
Miami Beach, Florida 33139
305-673-7530

As part of City's obligation to monitor and evaluate the expenditure of public funds as contemplated by this Agreement, the City's contract administrator and/or other City representatives may visit the Bass Museum and/or otherwise observe its programs, procedures, and operations. As part thereof, the Friends agree to provide notice to the City's contract administrator of meetings of the Board of Directors and its Executive Committee, to facilitate the City Manager's participation as a voting member thereof pursuant to the Bass Agreement.

The Friends shall maintain its good standing in accordance with the laws of the State of Florida and the City of Miami Beach Code of Ordinances ("City Code"), and shall comply with any federal, state or local laws applicable to the Friends or the conduct of its operations, including, without limitation, maintaining its exempt organization status pursuant to the Internal Revenue Code, obtaining any business tax receipt(s) that may be required for any business activity conducted in Miami Beach, timely making payment of all taxes, fees or charges that may be due to the City of Miami Beach, if any is required. Friends shall promptly take corrective action to correct any notice of violation issued by any governmental agency with jurisdiction over Friends. Further, the Friends agree to comply with the terms and conditions of any contract or other grant agreement that Friends may have separately entered into with the City of Miami Beach.

The Friends agree to defend, indemnify and hold harmless the City, and its officials, directors, officers, employees, agents, contractors, servants, successors and assigns against any claims, causes of actions, costs, expenses, (including reasonable attorney's fees) liabilities, or damages arising out of or in connection with any negligent act or omission, or intentional misconduct on the part of the Friends or any of its officials, directors, officers, employees, agents, contractors, servants, successors and assigns, in the performance of its obligations under this Agreement and/or from the Services.

Additionally, and notwithstanding the indemnification/hold harmless obligations in the preceding paragraph, or any other term or condition of this Agreement, the Friends shall defend, indemnify and hold harmless the City, its officials, directors, officers, employees, agents, contractors, servants, successors and assigns, against any claims, causes of actions, costs, expenses (including reasonable attorney's fees), liabilities, or damages arising out of or in connection with any claim, controversy or cause of action brought against the City of Miami Beach (and including its officers, employees, agents, and contractors) alleging any breach by the City of the Bass Agreement as a result of the execution of this Letter of Agreement between the City and Friends.

The indemnification and hold harmless requirements in the two preceding paragraphs shall survive the termination or expiration of this Agreement.

Notwithstanding this indemnification, and as a further condition, the Friends shall, at its sole cost and expense, maintain in full force and effect throughout the Term of the Agreement the insurance requirements set forth in the attached Exhibit B.

The Friends shall provide proof of the aforestated coverages to the City Manager, within thirty (30) days of execution of this Letter of Agreement. It is understood and agreed that any coverage provided by the Friends is primary to any insurance or self-insurance program the City has for the Museum, and that there shall be no right of recovery or subrogation against the City.

This Letter of Agreement may be terminated by the City Manager, for cause, in the event of a breach by the Friends' of any term(s) and/or condition(s) set forth herein and the Friends' failure to satisfactorily cure same within seven (7) days of written notice of such breach by the City Manager or his designee; or by either party, for convenience (and without cause), upon fifteen (15) days prior written notice to the other party.

All written notices and communications required or permitted hereunder may be delivered personally to the representatives of the Friends and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO FRIENDS:

Friends of the Bass Museum, Inc.
Attn: George Lindemann
President
2100 Collins Avenue
Miami Beach, Florida 33139
(305) 673-7530

TO CITY:

City of Miami Beach
Tourism, Culture and Economic Development
Attn: Heather Shaw
Assistant Director
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7577

Notices hereunder shall be effective: If delivered personally, on delivery; if mailed to an address in the city of dispatch, on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND FRIENDS EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

The Friends hereby represent, warrant and covenant to the City:

- (i) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder;
- (ii) that this Agreement has been duly executed and delivered by the President of the Friends, and attested to by the Secretary, and constitutes a valid and binding obligation of the Friends, enforceable in accordance with its terms; and
- (iii) that the Friends will comply with all laws applicable to its management of the Museum, as set forth in this Agreement; provided that the Friends will not be required to undertake any compliance activity, or have any liability under this Agreement, if such activity requires any capital expenditure beyond the approved Operating Budget.

Neither party may assign this Agreement.

Neither this Agreement, nor any of its terms, may be changed, modified, waived, or terminated except by an instrument in writing, signed by an authorized representative, which shall be the City Manager (on behalf of the City), and the President of the Friends (on behalf of the Friends).

The City and Friends acknowledge and agree that they are not joint venturers, partners, or joint owners with respect of the Bass Museum and/or with respect to this Agreement and/or the Services. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between the City and the Friends. Any employees at the Bass Museum who are City of Miami Beach employees shall remain City employees throughout the Term (unless otherwise terminated by the City), and shall remain under the supervision, direction and control of the City. Additionally, for purposes of this Agreement (or otherwise) no officer, director, employee, agent, or contractor of the Friends shall be deemed to be an agent or employee of the City, and shall not attain any rights or benefits under the Civil Service or Pension Ordinance of the City, or any right generally afforded Classified or Unclassified employees or be deemed entitled to Florida Worker's Compensation benefits as an employee of the City, or accumulation of sick or annual leave.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Rafael E. Granado, City Clerk

Jimmy L. Morales, City Manager

Date

Attest:

**FRIENDS OF THE BASS MUSEUM,
INC.,** a Florida not-for-profit corporation

Secretary

George L. Lindemann, President

Date

Exhibit A

The current FY2018-19 operating budget for the Bass currently totals \$3,328,485. The City's annual contribution of \$884,058 will be used to cover the following operating costs, as detailed below:

Administrative Costs	\$ 414,088
Facilities Costs	\$ 222,685
Permanent Collection Costs	\$ 244,035
Marketing Costs	\$ 3,250
Total	\$ 884,058

EXHIBIT B

INSURANCE REQUIREMENTS

1. Friends shall maintain, at Friends' sole cost and expense, the following types of insurance coverage at all times throughout the term of this Letter of Agreement:

- A. Commercial General Liability Insurance, on an occurrence form, in the amount of Two Million (\$2,000,000) Dollars, per occurrence, for bodily injury, death, property damage, and personal injury. This policy must name the City of Miami Beach, Florida, as additional insured.
- B. Workers Compensation Insurance shall be required under the Laws of the State of Florida and employer's liability insurance of not less than One Million Dollars (\$ 1,000,000) per occurrence.
- C. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits, subject to adjustment for inflation (only if Friends provides transportation services):

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$ 500,000 per accident
- D. All risks property insurance, containing a waiver of subrogation rights which Friends' insurers may have against the CITY and against those for whom the CITY is in law responsible including, without limitation, its directors, officers, agents, and employees, and (except with respect to Friends' chattels) incorporating a standard Florida mortgagee endorsement (without contribution). Such insurance shall insure property of every kind purchased and/or maintained at the Bass Museum and the Premises, including the value of the Collection and all improvements installed in the Premises, in an amount not less than the full replacement cost thereof (new), with such cost to be adjusted no less than annually. Such policy shall include as additional insureds the City and its affiliates.
- E. Fire Insurance shall be the responsibility of the City.
- F. Any other form of insurance which the City requires, from time to time, in form, in amounts, and for risks against which it would be prudent to insure, in the City's sole discretion.

2. The policies of insurance referred to in the above paragraph 1 above shall not be subject to cancellation or changing coverage, except upon at least thirty (30) days written notice to the City, and then subject to the prior written approval of City Manager.

3. Additional Insured Status. The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of Friends.

4. Waiver of Subrogation. Friends hereby grant to City of Miami Beach a waiver of any right to subrogation which any insurer of Friends may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. Friends agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

5. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

6. Verification of Coverage. Friends shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. Special Risks or Circumstances. The City of Miami Beach, in its sole discretion, through the City Manager, reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder
CITY OF MIAMI BEACH
c/o INSURANCE TRACKING SERVICES
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

8. Should Friends fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by the City in obtaining said insurance, shall be repaid by Friends to the City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Friends does not repay the City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid and such failure shall also be deemed an event of default hereunder.