

MANAGEMENT AGREEMENT

This agreement, made and entered into this ____ day of September, 2019, by and between the CITY OF PANAMA CITY, a Florida municipal corporation, hereinafter referred to as "City," and the BAY ARTS ALLIANCE, INC., a corporation not for profit organized and existing under the laws of the State of Florida, hereinafter referred to as "Alliance."

WHEREAS, City is the owner of certain facilities located at 19 E. 4th Street in Panama City, Florida, consisting of offices, art galleries and classrooms (the "Panama City Center for the Arts" or "Center for the Arts");

WHEREAS, City desires to enter into an agreement under which Alliance will be retained as the manager and primary programmer of events in the Panama City Center for the Arts;

WITNESSETH:

That for and in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

1. TERM. This automatically renewable agreement shall commence on the first day of October, 2019, and continue until September 30, 2021. Either party has a right to cancel this contract at any time upon the furnishing of thirty (30) days written notice to the other party.

2. FACILITIES. The Panama City Center for the Arts shall be divided into three basic sections as follows.

- a. OFFICES. Consisting of the entrance lobby and all rooms on the first floor designated for office use.
- b. ART GALLERIES. Consisting of the Main Gallery, Impressions Gallery, Higby Gallery and Mary Ola Miller Gallery.
- c. CLASSROOMS. Those rooms designated within the Panama City Center for the Arts as classrooms to conduct lessons and programs.

3. MANAGEMENT FEE AND FINANCIAL MANAGEMENT

a. In consideration of the services agreed to herein be performed by the Alliance, the City agrees to pay to the Alliance an annual management fee in the amount of \$99,121.00 payable in four (4) quarterly installments. This management fee shall be adjusted annually and such proposed adjustments shall be reflected in the Alliance's proposed budget prepared pursuant to paragraph 4(c) of this agreement.

b. Alliance agrees to remit to the City, monthly, all net rental revenues derived for Alliance's programming of facilities at the Center for the Arts pursuant to paragraph 6 of this agreement. Net rental revenues is defined as "all rental revenues collected from Lessees of any of the three (3) basic sections of the Center for the Arts as defined by paragraph 2 hereof, less all expenses incurred by the Alliance as a result of any Lessees'

use of the property.” All revenues derived in any way, directly or indirectly from the management of the Center for the Arts, less and except net rental revenues, shall be applied to an account entitled “Center for the Arts.” Monies from the account shall be spent for improvements to the Center for the Arts premises and related structures or for the promotion of the Center for the Arts facility. Any expenditure made for the Center for the Arts shall be in accordance with city department guidelines and beyond the maximum allowable under city departments shall require the approval of the City Manager, and such approval shall not be unreasonably withheld.

4. FISCAL CONTROLS, LIMITS AND BUDGET PROJECTIONS. Each party shall exercise fiscal controls and limits as follows:

a. Alliance shall not be obligated to subsidize the operation of the Center for the Arts but may do so solely at its own discretion.

b. At the beginning of each anniversary date of this agreement, the City and Alliance shall submit to the other an accounting containing the current revenue and expense statement of their respective accounts.

c. The City may, from time to time, and at its sole discretion audit all accounts, books and records of the Alliance to determine their compliance with the provisions of this agreement. The audits shall be performed by an independent auditor who shall be selected by mutual agreement of the parties.

d. Alliance shall submit to the City a budget and estimate of revenues and expenses by April 30 of each year.

e. The amount of the management fee established in section 3(a) will be paid to the Alliance in four proportionate payments on or before November 15, February 15, May 15, and September 30.

f. The Alliance shall provide the City with any and all audits, reports, and tax returns that reflect income and expenditures of the Alliance and the accomplishment of the Alliance objectives, if a part thereof.

5. MANAGEMENT OF FACILITIES. The Alliance, as management agent, will maintain hours of operation for the Center for the Arts facilities and oversee day-to-day activity, in order to develop the building and its facilities as a community arts resource. In reaching these objectives, the Alliance shall perform as follows:

a. RENTS. Rents to be charged for the use of the galleries and/or classrooms including the lobby and conference room shall be set by the Alliance in consultation with the City. Alliance shall be empowered to and responsible for the negotiation of all vending concessions operating and located in the Center for the Arts, and shall be entitled to all net revenues generated by said vending concessions.

b. SCHEDULING. A master calendar shall be maintained by the Alliance showing the scheduling of the Center for the Arts (galleries, classrooms and other designated spaces). Rental contracts will be made by the Alliance in conformity with the policies and priorities that are established in this agreement

c. PRIORITIES. Events shall be booked into the Center for the Arts with attention to the following priorities:

i. Events which will contribute to the quality of life, growth, development, and encouragement of the arts in Panama City.

ii. Events which will develop general and specific audiences for the Center for the Arts.

iii. Events which will serve the greatest number of people.

iv. Events which will attract more people to the downtown area.

v. Events which will foster local pride in the history, diversity, heritage, and special character of Panama City.

d. ALLOCATION OF CENTER FOR THE ARTS FACILITIES. Alliance may occupy all office spaces and equipment/storage rooms in the Center for the Arts, which it shall deem necessary for the management of the Center for the Arts.

e. CITY EVENTS. City shall have the privilege of booking City events in the Center for the Arts at no rental cost to the City. The right of the City under the provisions of this agreement shall be non-assignable. The City shall not have the right to pre-empt any scheduling which has been confirmed in the master book. Any City meetings may be held in the Center for the Arts classrooms or gallery spaces during the day as long as it does not interfere with bookings previously scheduled and approved by Alliance.

f. NON-DISCRIMINATORY PRACTICE. Alliance agrees that all activities conducted at the Center for the Arts and the rental of the facilities will be done on a nondiscriminatory basis.

6. ALLOCATION OF SPACE. Alliance shall be responsible for the allocation of space in the galleries and classrooms for art-related use. Occupancy may be by the Alliance or one or more parties to be organized by the Alliance for those purposes.

a. LEASES TO THIRD PARTIES. Alliance shall have the authority to lease or let any portion of the office building to cultural-related tenants provided that the term of the lease shall not exceed the remaining term of this agreement or any renewal hereof. Net rental payments from such leases shall be collected by the Alliance and shall be paid to the City as provided for in Article 3 of this agreement. All leases or agreements entered into with third parties, giving such third parties permission or the right to occupy any portion of the Center of the Arts on a recurring basis shall be subject to all of the terms, conditions and limitations of this contract. All such leases may be reviewed by the Office of the City Manager.

b. LEASES TO COMMERCIAL TENANTS. If Alliance finds that it is unable to rent or otherwise properly use any of the conference rooms for culturally-related tenants, such space may be rented to commercial tenants by the City at reasonable rates. Net rent collected from said rentals shall be retained by the City but credited towards revenues generated by the Alliance under the terms of this management agreement.

7. MAINTENANCE AND REPAIRS. City agrees that pursuant to the terms of this contract all general maintenance, maintenance of the exterior and structural repairs necessitated shall be performed by the City provided, that such repairs are not made necessary as a result of misuse of the facilities by the Alliance. City shall maintain all heating, ventilating, air-conditioning equipment, wires, pipes, conduits, and other equipment or facilities for supplying heat, light, power, hot and cold water services to the premises, all drainage and waste pipes or facilities leading to or from the premises which are located outside the facilities. The City shall not be liable to the Alliance or any of its tenants for damage arising from the City's failure to perform the work required under the terms of this contract. The provisions of this paragraph pertaining to maintenance shall not apply to any equipment which is installed by the Alliance in any of the facilities or other personal property of the Alliance. In addition, the City shall not be responsible for any costs of maintenance in excess of the sum budgeted for that purpose pursuant to the City's Budget line item currently found in Department 8008, Line 54600.

8. ALTERATIONS TO THE PREMISES. City shall consider requests of the Alliance to make non-structural alterations to the premises as the Alliance may desire. All of said alterations shall be made at the expense of the Alliance. Any structural alterations which may be required to the facilities shall only be made upon mutual agreement by the parties signed in writing with the costs to be paid as agreed to therein.

9. UTILITIES. City shall furnish and pay for all utilities including but not limited to gas, electricity, water, sewer service and refuse service to the utilities. The Alliance shall be responsible for and shall pay for all telephone and internet services supplied to the facilities.

10. ACCESS. Alliance shall give the City and its authorized representatives access to the facilities or any portion thereof at reasonable hours for the purposes of examining and inspecting said premises. In addition, the City and its authorized representatives shall have access to the facilities or any portion thereof for the purposes necessary, and incidental to, or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

11. INSURANCE. The Alliance shall be responsible for all operations and functions conducted within the facilities and for all claims, suits, damages, or injuries to persons or property of whatever kind or nature arising or resulting from the negligence or improper conduct of the Alliance, or any of its employees. Alliance hereby agrees to maintain, at its own cost and expense, which costs may be charged against the Center for the Arts account, a standard policy or policies of insurance in a form satisfactory to the City, naming both the Alliance and the City as insureds against public liability and products liability coverage, with bodily injury limits of \$500,000.00 per occurrence and property damage limits of \$1,000,000.00 per occurrence. All insurance policies shall be with companies satisfactory to the City. Alliance shall furnish a certificate from the insurance carrier or carriers showing such insurance to be in full force and effect during the term of this contract and with a provision that it may not be canceled without appropriate notice being given to the City. Alliance shall in addition, obtain workman's compensation insurance during the term of this agreement as required by law for its employees.

12. DESTRUCTION OF PREMISES. In the event of the destruction of the facilities during the term of this agreement or any period of renewal which shall render the premises substantially unusable, this agreement may be terminated at the option of either party. In the event of such termination, all advances made as provided for in Article 3 of this agreement shall cease and the Alliance shall be obligated to repay the City such sums due under this agreement as may be determined by the parties. In the event the premises or a portion thereof are unusable, the Alliance may, at its option, continue to operate any of the remaining portions of the facilities after partial destruction and the terms of this agreement as to the advance of monies by the City shall be mutually agreed between the parties. The Alliance shall not be obligated to make any repairs to the building not attributable to its own negligence or the negligence of its employees, lessees, or subleases. There shall be no obligation on the part of the City to restore or repair the facilities or any portion thereof which may be destroyed during the term of this agreement or any renewal hereof.

13. SECURITY GUARDS. The City shall have no obligation to furnish security guards or related services at the facilities. The furnishing of security guards as may be needed shall be the sole expense of the Alliance.

14. USE OF PREMISES. Alliance agrees that in its occupancy and use of the premises it shall comply with all laws, ordinances and regulations of the State of Florida, the federal Government and agencies thereof. The Alliance agrees that it will not permit the facilities to be used for activities which may in any way be deemed hazardous or dangerous to the facilities without first obtaining the written consent of the Fire Department of the City of Panama City.

15. CONDITION OF PREMISES. The Alliance hereby acknowledges that it has inspected the facilities and accepts them in an as-is condition. Alliance further acknowledges that there have been no warranties by the City as to the suitability of the facilities for any particular use and hereby releases the City from any liability pertaining to the present condition of the facilities.

16. TERMINATION UPON DEFAULT. In the event the Alliance shall fail to comply with any of the terms, conditions, or provisions of this agreement and such failure or neglect shall continue for a period in excess of fifteen (15) days after having received written notice from the City of such failure or neglect, the City may, at its option, immediately or any time thereafter, terminate this agreement with such termination becoming effective upon the mailing of such notice to the Alliance. Termination of this agreement by the City shall be without prejudice to any remedy which otherwise might be available to the City for the arrearages and any payment required under the terms of this agreement or for any damages for breach of contract.

17. WAIVER. Any waiver of any breach of covenant contained herein shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from terminating this contract for any succeeding breach either of the same condition or covenant.

18. MODIFICATIONS. All modifications or changes to this contract must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have set their hands and seals the date and year first above written.

CITY OF PANAMA CITY

BAY ARTS ALLIANCE, INC.

GREG BRUDNICKI, MAYOR

FRANK MARTIN, BOARD PRESIDENT

ATTEST:

ATTEST:

MARK MCQUEEN, CITY MANAGER

JANICE LUCAS, PRESIDENT ELECT

STATE OF FLORIDA
COUNTY OF BAY

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared and, to me known to be the persons described in and who executed the foregoing instrument and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of September, 2019.

NOTARY:

MY COMMISSION EXPIRES:
