

**Condensed Title:**

A Resolution approving the allocation of \$651,000 from FY 2013/14 General Fund account 011.0930 to the Friends of the Bass Museum for the purpose of funding operating expenses at the Museum through September 30, 2014; and further authorizing the City Manager to execute a Letter Agreement with the Friends of the Bass Museum in the amount of \$651,000.

**Key Intended Outcome Supported:**

Increase community rating of cultural activities.

**Supporting Data (Surveys, Environmental Scan, etc.):**

The 2012 Community Satisfaction Survey shows six in ten residents (61%) claimed there were enough museums in Miami Beach, yet 34% thought there were too few. In 2009, only 29% of residents thought there were too few museums. Residents in South Beach/Bella Isle (45%) were more likely to think there were too few museums.

**Item Summary/Recommendation:**

The Bass Museum was established from its inception as a strong public/private partnership through a contractual agreement entered into 45 years ago when the City accepted the gift of the art collection of John and Johanna Bass. This agreement stipulates that the City will maintain the collection in perpetuity, keep it open to the public, and provide basic funding for the maintenance and exhibition of the collection. The agreement further stipulates that the Bass Museum, as an operating entity, should be overseen by a Board of Trustees. In addition to the City and the Board of Trustees, a third entity has existed to promote and further the mission of the Bass Museum of Art: The Friends of the Bass Museum, Inc.

At the June 3, 2009, City Commission Meeting, Resolution No. 2009-27089 was approved, which authorized the transfer of \$137,000 to the Friends of the Bass Museum. Transferring the budget allocations for certain line items began the process of transitioning much of the day-to-day administration and oversight of the Museum to the Friends pending a larger re-vamp of the governing structure of the Museum. This concept was also discussed at the May 5, 2009 Finance and Citywide Projects Committee. The Finance Committee approved the transfer of those operating line item balances and recommended that the Administration come back, as part of the City budget process, for any future allocations. Accordingly, at the September 24, 2009 City Commission Meeting, Resolution No. 2009-27216 was approved, authorizing the allocation of \$512,000 to the Friends of the Bass Museum, to fund certain operating expenses for Fiscal Year 2009-10. Similar allocations were approved in 2010 (Resolution No. 2010-27505; \$536,495), 2011 (Resolution No. 2011-27757; \$623,391.) and 2012 (Resolution No. 2012-28027; \$585,501).

On March 10, 2010, the City Commission adopted Resolution No. 2010-27349 amending the agreement between the City and Dennis Richard. Similar to the September 2012 action, the Administration is seeking authorization to allocate \$651,000 to the Friends of the Bass for salary expenses related to the Museum's Assistant Director, curatorial services, security guard, office associate IV and a building supervisor, as well as other operating expenses. In an effort to ease the future privatization of the Bass Museum, recently-vacated City positions have been filled as employees of the Bass Museum (non-profit entity). As previously stated, the objective is to transition all Bass Museum positions to the Bass over time, which will allow for significant savings to the City in salaries and benefits. In FY 13/14, another vacant position (Registrar) will not be filled by the City and the Bass Museum will assume the responsibility for this position. Of the eight (8) City funded Bass Museum positions, two (2) are currently City employees. The remaining six (6) positions have been filled as employees of the Friends of the Bass Museum and the City has transferred the funding for these positions to the Bass Museum.

**Advisory Board Recommendation:**

The Finance and Citywide Projects Committee endorsed this concept at the May 5, 2009 meeting.

**Financial Information:**

Source of Funds:	Amount	Account	Approved
1	\$ 651,000	FY 2013/14 General Fund 011.0930	
<b>Total</b>	<b>\$ 651,000</b>		

OBPI

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Max Sklar, ext. 6116

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
MAS	KGB	JLM

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## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 30, 2013

SUBJECT **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AN ALLOCATION, IN THE AMOUNT OF \$651,000, FROM FY 2013/14 GENERAL FUND ACCOUNT NO. 011.0930; SAID ALLOCATION TO BE PROVIDED AND UTILIZED BY THE FRIENDS OF THE BASS MUSEUM, INC., FOR THE PURPOSE OF CONTINUING TO FUND AND PROVIDE CERTAIN OPERATING EXPENSES AT THE BASS MUSEUM OF ART, THROUGH SEPTEMBER 30, 2014; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW LETTER AGREEMENT WITH THE FRIENDS OF THE BASS MUSEUM, INC. MEMORIALIZING THE PARTIES' RESPECTIVE OBLIGATIONS WITH REGARD TO CERTAIN MANAGEMENT AND OPERATION RESPONSIBILITIES OF THE BASS MUSEUM THROUGH SEPTEMBER 30, 2014.**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### FUNDING

Funding is available in the FY 13/14 General Fund, Bass Museum of Art Budget.

### BACKGROUND

The Bass Museum was established from its inception as a strong public/private partnership through a contractual agreement entered into 49 years ago when the City accepted the gift of the art collection of John and Johanna Bass. This agreement stipulates that the City will "maintain the collection in perpetuity...provide for the exhibition of the collection, keep it open and available to the public," and provide basic funding for the maintenance and exhibition of the collection. The City fulfills this obligation by funding the operational elements of the Museum, and maintaining the building, which is a City asset. The agreement further stipulated that the Bass Museum, as an operating entity, should be overseen by a Board of Trustees with responsibility for Museum policies and procedures, as well as day-to-day management through the staff it employed. The Museum's Executive Director/Chief Curator, for example, is a City employee with full benefits, but is hired by, and answers to, the Board of Trustees.

In addition to the City and the Board of Trustees, a third entity has existed to promote and further the mission of the Bass Museum of Art: The Friends of the Bass Museum, Inc. This private and separate 501(c)3 organization was established in 1978 as the membership and fundraising arm of the Museum. The President of the Friends chairs the Board of Trustees. The Friends' Board of Directors served as advisory to the Trustees, advocated and raised funds for the Museum, and sponsored Museum programs, which included all special exhibitions and educational programs. The Museum's membership, education, development and marketing efforts were realized by employees of the Friends of the Bass Museum. Thus the current Museum staff consists of City employees (both classified and unclassified) and Friends employees, with substantial differences in benefits and pay scales.

## **ANALYSIS**

The Administration began working with the Museum's staff and Boards to streamline the current governance model and to standardize employment practices. The need for a modification of the Museum's governance structure was also identified through a Strategic Planning Process and Peer Review. While the City remains fully committed to the Bass Museum and its success, both the Administration and the Museum felt that the City can continue to fulfill its contractual obligations without having actual City employees working at the Museum, while funding for the Museum may be better allocated if the Museum is able to function independent of certain City processes and contracts. To this end, two recently-vacated City positions at the Bass, the Assistant Director and Curator, have been filled as employees of the Friends. The objective is to transition all Bass Museum positions to the Friends of the Bass over time, which will allow for significant savings to the City in salaries and benefits (especially pension). Additional savings in certain operational line items have also been identified.

At the June 3, 2009, City Commission Meeting, Resolution No. 2009-27089 was approved, which authorized the transfer of \$137,000 to the Friends of the Bass Museum. In addition to providing them with direct oversight and management of these operational issues, this also allows the Friends to pursue potential savings by using non-City contracts for services such as carpet cleaning or for the purchase of office supplies, for example. This action also began the process of transitioning much of the day-to-day administration and oversight to the Friends. This was an important step in moving towards increased simplification of the Museum's governance structure, which has been considered essential for the future well-being of the institution and was included in the Museum's own five-year strategic plan.

This concept was also discussed at the May 5, 2009 Finance and Citywide Projects Committee. The Finance Committee approved the transfer of those operating line item balances and recommended that the Administration come back, as part of the City budget process, for any future allocations. Accordingly, at the September 24, 2009 City Commission Meeting, Resolution No. 2009-27216 was approved, authorizing the allocation of \$512,000 to the Friends of the Bass Museum, to fund certain operating expenses for Fiscal Year 2009-10. Similarly, at the September 20, 2010 Commission meeting, Resolution No. 2010-27505 was approved, allocating \$536,495, on September 27, 2011, Resolution No. 2011-27757 was approved, allocating \$623,391 and on September 27, 2012, Resolution No. 2012-28027 was approved, allocating \$ 585,501.

Concurrent with the above, in August 2009, the Administration, the testamentary representative of the Bass Family, and representatives of the Friends, commenced discussions to begin the process of developing a new governance model for the Museum, which includes an overhaul of the existing by-laws of the Friends, culminating in reconstituting that 501(C)3 nonprofit organization as the Bass Museum of Art, Inc. (which entity will replace the Friends as the new governing entity for the Museum).

On March 10, 2010, the City Commission adopted Resolution No. 2010-27349 amending the agreement between the City and Dennis Alan Richard (as Successor in Interest to John and Johanna Bass). This new Agreement, among other things, replaced both the existing Bass Board of Trustees and the Friends of the Bass Museum, Inc., with the Bass Museum of Art, Inc., a 501(c)3, composed of actual stakeholders (as opposed to the then current Board of Trustees, who maintained their seats by virtue of their contractually designated positions under the 1963 Agreement). The City Manager retained membership on the new governing board, with voting power equivalent to 20% of the membership of the Board, comparable to the City Manager's representation on the previous Board of Trustees. The day-to-day responsibility to ensure the City's contractual obligations to maintain the Collection would be handled by this new governing body through a separate management agreement with the City.

Similar to the September 2009, 2010, 2011 and 2012 actions, the Administration is seeking authorization to allocate \$651,000 to the Friends of the Bass for salary expenses related to the Museum's Assistant Director, curatorial services, security guard, Office Associate IV and a building supervisor. In an effort to ease the future privatization of the Bass Museum, recently-vacated City positions have been filled as employees of the Bass Museum (non-profit entity). As previously stated, the objective is to transition all Bass Museum positions to the Bass over time, which will allow for significant savings to the City in salaries and benefits. In FY 2013/14, another position (Registrar) will become vacant and the Bass Museum will assume responsibility for this position. The proposed allocation reflects the salary for the additional position. Of the eight (8) City funded Bass Museum positions, two (2) are currently City employees. The remaining six (6) positions have been filled as employees of the Friends of the Bass Museum, and the City has transferred the funding for these positions to the Bass Museum.

Additionally, the Administration recommends allocating funds for operating expenses as approved in 2010. The allocation is broken out as follows:

• Salaries and Benefits:	\$304,274
• Professional Services:	\$ 93,343
• Electricity:	\$108,000
• Telephone:	\$ 2,000
• Sanitation:	\$ 900
• Rent/Building/Equipment (art storage):	\$113,184
• Contract Maintenance:	\$ 8,800
• Office Supplies:	\$ 7,000
• Repairs and Maintenance:	\$ 1,000
• Other Operating Expenses:	\$ 10,000
• Dues:	\$ 2,500
<b>TOTAL</b>	<b>\$651,000</b>

Similar to the previous allocation, the Administration also recommends entering into a letter agreement with the Friends delineating the responsibilities the Friends would be required to meet in exchange for the funding. These obligations would be very similar to functions currently carried out jointly between the City and Friends.

### **CONCLUSION**

The Administration recommends approving the transfer of currently-budgeted operating funds from the City to Friends of the Bass Museum, Inc.

/JLMKGB/MAS/gf

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**BASS MUSEUM FY 2013/14 BUDGET**

		<b>14 Budget</b>	<b>CMB - Proj</b>	<b>FOB - Proj</b>	<b>TOTAL</b>
111	Salaries	\$ 492,274	\$ 193,000	\$ 299,274	\$ 492,274
135	OT	\$ -		\$ -	\$ -
153	Allowances	\$ 6,000	\$ 6,000	\$ -	\$ 6,000
154	Uniforms	\$ -		\$ -	\$ -
159	Pension	\$ 9,000	\$ 9,000	\$ -	\$ 9,000
160	401	\$ -		\$ -	\$ -
161	Retirement	\$ 80,000	\$ 80,000	\$ -	\$ 80,000
162	Health	\$ 14,000	\$ 9,000	\$ 5,000	\$ 14,000
163	Work Comp	\$ 1,000	\$ 1,000	\$ -	\$ 1,000
165	SS	\$ 4,000	\$ 4,000	\$ -	\$ 4,000
166	FICA	\$ -	\$ -	\$ -	\$ -
	<i>Sub Total</i>	\$ 606,274	\$ 302,000	\$ 304,274	\$ 606,274
311	Temp Labor	\$ -			\$ -
312	Pros Svcs	\$ 93,343		\$ 93,343	\$ 93,343
314	Elec	\$ 108,000		\$ 108,000	\$ 108,000
316	Tele	\$ 2,000		\$ 2,000	\$ 2,000
319	Sanitation	\$ 900		\$ 900	\$ 900
323	RBE	\$ 113,184		\$ 113,184	\$ 113,184
325	Cont. Maint	\$ 8,800		\$ 8,800	\$ 8,800
327	Ads	\$ -			\$ -
341	Office Supp	\$ 7,000		\$ 7,000	\$ 7,000
342	Repair/Maint	\$ 1,000		\$ 1,000	\$ 1,000
343	Other Ops	\$ 10,000		\$ 10,000	\$ 10,000
361	Dues	\$ 2,500		\$ 2,500	\$ 2,500
363	Travel	\$ -		\$ -	\$ -
367	Training	\$ -		\$ -	\$ -
	<i>Sub Total</i>	\$ 346,727	\$ -	\$ 346,727	\$ 346,727
501	Cent Svcs	\$ 2,000	\$ 2,000	\$ -	\$ 2,000
502	Prop Mgmt	\$ 88,000	\$ 88,000		\$ 88,000
503	Fleet	\$ 3,000	\$ 3,000	\$ -	\$ 3,000
504	Comm	\$ 62,000	\$ 62,000	\$ -	\$ 62,000
505	Self Ins	\$ 111,000	\$ 111,000	\$ -	\$ 111,000
506	Comp	\$ 69,000	\$ 69,000	\$ -	\$ 69,000
512	Prop/Elec	\$ 14,000	\$ 14,000	\$ -	\$ 14,000
	<i>Sub Total</i>	\$ 349,000	\$ 349,000	\$ -	\$ 349,000
	<b>TOTAL</b>	<b>\$ 1,302,001</b>	<b>\$ 651,000</b>	<b>\$ 651,000</b>	<b>\$ 1,302,001</b>

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AN ALLOCATION, IN THE AMOUNT OF \$651,000, FROM FY 2013/14 GENERAL FUND ACCOUNT NO. 011.0930; SAID ALLOCATION TO BE PROVIDED AND UTILIZED BY THE FRIENDS OF THE BASS MUSEUM, INC., FOR THE PURPOSE OF CONTINUING TO FUND AND PROVIDE CERTAIN OPERATING EXPENSES AT THE BASS MUSEUM OF ART, THROUGH SEPTEMBER 30, 2014; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW LETTER AGREEMENT WITH THE FRIENDS OF THE BASS MUSEUM, INC., MEMORIALIZING THE PARTIES' RESPECTIVE OBLIGATIONS WITH REGARD TO CERTAIN MANAGEMENT AND OPERATION RESPONSIBILITIES OF THE BASS MUSEUM, THROUGH SEPTEMBER 30, 2014.**

**WHEREAS**, the Bass Museum (Museum) was established from its inception as a strong public/private partnership through a contractual agreement entered into in 1963 between the City and John and Johanna Bass, whereby the City accepted the gift of the art collection of John and Johanna Bass (the Bass Collection), in exchange for making the Bass Collection open and available to the public in a building maintained by the City (the 1963 Agreement and all subsequent amendments thereto is hereinafter referred to as the "1963 Bass Agreement"); and

**WHEREAS**, the 1963 Bass Agreement, requires the City to maintain the Bass Collection in perpetuity; provide for the exhibition of the Collection; keep it open and available to the public; and provide basic funding for the maintenance and exhibition of the Collection; and

**WHEREAS**, the City fulfills this obligation by funding the operational elements of the Bass Museum and maintaining the building, which is a City asset; and

**WHEREAS**, the 1963 Bass Agreement further stipulates that the Bass Museum shall be overseen by a Board of Trustees, who has the responsibility for Museum policies and procedures, as well as day-to-day management through the staff it employs; and

**WHEREAS**, a third entity exists to promote and further the mission of the Bass Museum, the Friends of the Bass Museum, Inc., which is a 501(c)3, established in 1978 as the membership and fundraising arm of the Museum; and

**WHEREAS**, since 2008, the Administration has been working closely with the Bass Board of Trustees (Bass Board) and the Friends of Bass Museum, Inc.(Friends) to streamline the current governance model, standardize employment practices, and empower the Museum to fully realize its potential as the City's prominent art institution; and

**WHEREAS**, on March 10, 2010, the City Commission adopted Resolution No. 2010-27349 which approved an Amended and Restated Bass Museum Agreement between the City and Dennis Alan Richard (as successor in interest to John and Johanna Bass); the Amended and Restated Agreement was intended to replace and supersede the 1963 Bass Agreement; and

**WHEREAS**, since 2009, the City has approved Resolution Nos. 2009-27089, 2009-27216, 2010-27505, 2011-27757, and 2012-28027, all with corresponding Letter Agreements, whereby the City agreed to appropriate and transfer budgeted operating funds for the Museum, in consideration of the Friends' agreement to undertake certain management and operational responsibility (on behalf of the City) for the Museum; and

**WHEREAS**, the City and Friends have agreed to execute another Letter Agreement for Fiscal Year (FY) 2013/14, whereby the Friends will to continue to provide certain oversight and management responsibilities relative to the Bass Museum, through September 30, 2014; the Letter Agreement is attached and incorporated as Exhibit "A" hereto.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH FLORIDA** that the Mayor and City Commission hereby appropriate \$651,000 from FY 2013/14 General Fund Account No. 011.0930; said appropriation to be provided to and utilized by the Friends of the Bass Museum, Inc. for the purpose of continuing to fund and provide certain operating expenses at the Bass Museum of Art, through September 30, 2014; and further authorizing the City Manager to execute a new Letter Agreement with the Friends of the Bass Museum, Inc., memorializing the parties' respective obligations with regard to certain management and operation responsibilities of the Bass Museum, through September 30, 2014.

**PASSED and ADOPTED** this 30th day of September, 2013.

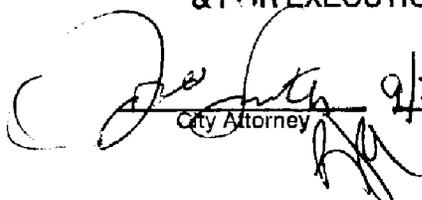
\_\_\_\_\_  
**MAYOR**

**ATTESTED BY:**

\_\_\_\_\_  
**CITY CLERK**

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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

9/24/13  
\_\_\_\_\_  
Date



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

OFFICE OF THE CITY MANAGER  
Tel: 305.673.7010, Fax: 305.673.7782

September 30, 2013

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

**Re: Agreement between the City of Miami Beach, Florida (City) and the Friends of the Bass Museum, Inc. (Friends) for the Continued Management and Operation of the Bass Museum of Art from October 1, 2013 to September 30, 2014**

Dear Mr. Lindemann:

The foregoing Letter Agreement shall confirm the understanding between the City and the Friends, with regard to the Friends' continuing to provide certain management and operational responsibilities at the Bass Museum of Art, located at 2121 Park Avenue, Miami Beach, Florida (hereinafter the Bass Museum or the Museum), for a term commencing on October 1, 2013 (Commencement Date), and terminating on September 30, 2014 (the Term).

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 and restated on March 10, 2010, and approval pursuant to the July 8, 1963 agreement between the City and John and Johanna Bass, and the March 10, 2010 amended and restated agreement between the City and Dennis Alan Richard (as Successor in Interest to John and Johanna Bass, as well as any amendments thereto, is hereinafter referred to as 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 aforesated 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 represents to City that, prior to the commencement of the Term, its authorized representatives have inspected the Bass Museum building; accordingly, the Friends hereby accept the facility **'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.

Attached as Exhibit "A" hereto is the Museum's Operating Budget for the Term (the Operating Budget or Budget), which the City and Friends have mutually reviewed and approved. The City and Friends hereby agree and acknowledge that said Budget is adequate for the provision of the Services. The Friends shall not exceed the Operating Budget, which has been established at \$ 651,000.

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 Operating 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 Operating 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 shall pay all items of expense related to the Services (and subject to the amount indicated in the approved Operating 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.

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. Any financial records shall be maintained in accordance with generally accepted accounting principles. 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.

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:

Gary Farmer, Cultural Affairs Program Manager  
Tourism and Cultural Development Department  
City of Miami Beach  
1755 Meridian Avenue  
Miami Beach, Florida 33139  
305-673-7577

For the Friends:

Silvia Karman Cubina  
Executive Director/Chief Curator  
Friends of the Bass Museum  
2121 Park Avenue  
Miami Beach, Florida 33139  
305-673-7530

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 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 following insurance:

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.

Workers' Compensation and Employers' Liability coverage, in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Friends' personal property in the Museum and all improvements installed in the Museum by or on behalf of the Friends.

The Friends shall provide proof of the aforestated coverages to the City Manager, within thirty (30) days of execution of this Letter 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. All policies must be issued by companies authorized to do business in the State of Florida and assigned a rating of B+VI or better, per Best's Key Rating Guide, latest edition.

This Letter 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  
2121 Park Avenue  
Miami Beach, Florida 33139  
(305) 673-7530

**TO CITY:** City of Miami Beach  
Attn: Max Sklar  
Cultural Arts & Tourism Dev. Director  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
(305) 673-7000, Ext. 6116

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 represents, warrants and covenants 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 continue to 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.

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Attest:

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Jimmy L. Morales, City Manager

\_\_\_\_\_  
Date

Attest:

**FRIENDS OF THE BASS MUSEUM, INC.**

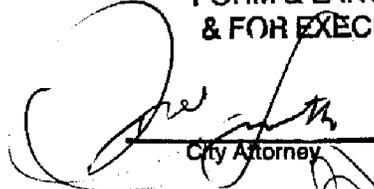
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
George Lindemann, President

\_\_\_\_\_  
Date

T:\AGENDA\2013\September 30\Bass Letter Agreement \_sept 2013.doc

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

9/24/13  
Date