

**COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
FAUBOURG SAINT JOHN NEIGHBORHOOD ASSOCIATION, INC.
FORTIER PARK IMPROVEMENTS**

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Faubourg Saint John Neighborhood Association, Inc., represented by Andrew Ryan, President (the “**FSJNA**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, the City is a political subdivision of the State of Louisiana;

WHEREAS, the FSJNA is a Louisiana nonprofit corporation which principal address is located at P.O. Box 19101, New Orleans, Louisiana 70179;

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

WHEREAS, the City and the FSJNA desire to accomplish a valuable public purpose of improving and maintaining Fortier Park;

WHEREAS, the FSJNA will continue to act as steward of Fortier Park by maintaining and preserving existing structures and garden plantings;

WHEREAS, the FSJNA will continue to act as steward of Fortier Park by incorporating and implementing enhancement projects that serve to beautify the immediate neighborhood, including garden plantings, artistic structures, and functional structures;

WHEREAS, the FSJNA will re-install an Art Tile Exhibit along a concrete walkway situated in Fortier Park; and

WHEREAS, the City will continue to maintain the trees and turf.

NOW THEREFORE, the City and the FSJNA, each having the authority to do so, agree as follows:

ARTICLE I - THE FSJNA’S OBLIGATIONS

FSJNA will donate the following items and services for the improvement and maintenance of Fortier Park:

A. Installation of Art Tile Exhibit:

- a. Furnish all materials and labor to furnish and install the art tiles. This includes, but is not limited to:
 - i. A scaled plan depicting the exact location of the pavers.
 - ii. A construction detail depicting the materials and technique for the paver installation.
 - iii. All materials for the installation.
 - iv. All labor to install the tiles.
- b. A schedule for installation.
- c. Insurance coverage for the installation of the Art Tile Exhibit per the City's requirement in the event that the installer/installation company does not carry their own policy of liability insurance.
- d. Installer shall be licensed as required by Louisiana Law.

B. For future enhancement projects:

- a. Receive approval from the City for all future enhancement projects prior to commencing work.
- b. Regardless of the above subsection, no City approval shall be required for any projects that maintain the garden plantings, excluding turf and trees.

ARTICLE II - THE CITY'S OBLIGATIONS

A. **Administration.** The City will:

1. Administer this Agreement through the Department of Parks and Parkways ("PKW");
2. Provide the FSJNA with access to all personnel deemed necessary by the City and FSJNA for the review and approval of plans and other documents deemed necessary for the FSJNA's performance of any work required under this Agreement;
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the FSJNA; and
4. Assist with project planning as deemed appropriate by the City and FSJNA.

ARTICLE III - FUNDING

The City is not providing any funding under this Agreement.

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this agreement shall be for one year from the Effective Date.

B. **Extension.** Either party can opt to extend the term of this Agreement provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

C. Termination for Convenience. Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least 30 calendar days before the intended date of termination.

D. Termination for Cause. Either party may terminate this Agreement immediately for cause by sending written notice to the other party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

ARTICLE V - INDEMNITY

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

B. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE VI - INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the FSJNA will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

a. Minimum Requirements:

- i. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, FSJNA will maintain the following insurance in full force and effect for the

duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the FSJNA's scope of work under the Agreement.

- ii. If FSJNA maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by FSJNA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:
 - a. Minimum Requirements:
 - b. As the City requires Worker's Compensation & Employer's Liability Insurance, but as the Contractor is not an applicable entity to purchase and/or maintain such coverage, in the event that the Contractor hires any subcontractor, independent contractor, company, business, or other entity to perform work as outlined in this Agreement, the Contractor will only hire such subcontractor, independent contractor, company, business, or other entity provided they maintain their own policy of Workers' Compensation & Employers Liability Insurance subject to the minimums required by the City.
 - c. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- iii. Important: FSJNA shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage
- iv. The obligations for FSJNA to procure and maintain insurance shall not be constructed to waive or restrict other obligations.
- v. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve FSJNA from any liability incurred as a result of their activities/operations in conjunction with FSJNA's obligations and/or Scope of Work. FSJNA shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed FSJNA's limits of liability that arise from the performance of work under the Contract.
- vi. Additional Insured Status: FSJNA and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as "Additional Insureds" on the CGL and AL policies with respect to liability arising out of the performance of this agreement. Additional Insured status can be provided in the form of an endorsement to FSJNA's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

- vii. FSJNA shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by FSJNA. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.
- viii. The Additional Insured box shall be marked “Y” for Commercial General Liability and Auto Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.
- ix. Primary Coverage: For any claims related to this agreement, FSJNA’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the FSJNA’s coverage.
- x. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, FSJNA must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.
- xi. Waiver of Subrogation: FSJNA and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.
- xii. Notice of Cancellation: Each insurance policy required above shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- xiii. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.
- xiv. Notice: FSJNA will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 business days of the City’s reasonable request:
- xv. Copies of all policies of insurance, including all policies, forms, and endorsements:
- xvi. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.
- xvii. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based

on the nature of the risk, prior experience, insurer coverage, or other circumstances.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status. **The Contractor will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds”** on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificateholder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.
- ii. Primary Coverage. For any claims related to this contract, **the Contractor’s insurance coverage shall be primary** insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to the Contractor’s coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 5 years after the termination of this agreement
- iv. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- v. Notice of Cancellation. Each insurance policy required above shall provide that **coverage shall not be canceled, except with prior notice to the City of no less than 60 days.**
- vi. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII**, unless otherwise acceptable to the City.

B. The FSJNA will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: **FORTIER PARK IMPROVEMENTS**) within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;

- b. Copy of the fully executed Agreement;
 - c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
 - d. Statements disclosing any policy aggregate limit.
- C. Without notice from the City, the FSJNA will:
- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 - c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

ARTICLE XII - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Michael Karam, Director
Department of Parks and Parkways
2829 Gentilly Boulevard
New Orleans, Louisiana 70122

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

Andrew Ryan, President
Faubourg Saint John Neighborhood Association, Incorporated
P.O. Box 19101
New Orleans, Louisiana 70791

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XIII - ADDITIONAL PROVISIONS

A. **Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. **Assignment.** This Agreement and any part of the FSJNA's interest in it are not assignable or transferable without the City's prior written consent.

C. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. **Conflicting Employment.** To ensure that the FSJNA's efforts do not conflict with the City's interests, and in recognition of the FSJNA's obligations to the City, the FSJNA will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The FSJNA will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the FSJNA's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

E. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the FSJNA on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

G. **Jurisdiction.** The FSJNA consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the FSJNA.

H. **Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

I. **No Expectation of Benefit or Special Treatment.** The FSJNA swears that, as a result of the donation of the services that are the subject of this Agreement or otherwise, it has no expectation of benefit or special treatment with regard to other contracts or potential contracts with the City.

J. **No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

K. **Non-Exclusivity.** This Agreement is non-exclusive and the FSJNA may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

L. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

M. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the FSJNA, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the FSJNA pursuant to this Agreement without regard to the FSJNA's otherwise satisfactory performance of the Agreement.

N. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

O. **Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

P. **Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

Q. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

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[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the FSJNA, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 31st of May, 2023

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tye

FAUBOURG SAINT JOHN NEIGHBORHOOD ASSOCIATION, INC.

BY: 

ANDREW RYAN, PRESIDENT

74-2633439

FEDERAL TAX I.D. OR SOCIAL SECURITY NO.