

**THE FOLLOWING RESOLUTION WAS INTRODUCED BY COUNCIL
MEMBER MCGUIRE AND SECONDED FOR ADOPTION BY
COUNCIL MEMBER _____**

RESOLUTION NO. 22-37

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANDEVILLE
AUTHORIZING THE MAYOR OF THE CITY OF MANDEVILLE TO EXECUTE
A COOPERATIVE ENDEAVOR AGREEMENT BETWEEN THE CITY OF
MANDEVILLE AND OZONE MUSIC EDUCATION FOUNDATION, INC.; AND
PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that “for a public purpose, the state and its political subdivisions may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual;” and

WHEREAS, Ozone’s mission is to enhance the appreciation and education of music for the people of St. Tammany Parish by providing both children and adults within the community with music education and support their endeavors in songwriting and other careers within the music industry; and

WHEREAS, the programs and services provided by Ozone benefit the community through cultural arts; which serves a public benefit and serves a public purpose; and

WHEREAS, the City is the owner and operator of the Mandeville Trailhead Depot located at 675 Lafitte Street, Mandeville, LA 70448; and

WHEREAS, Ozone desires to use the Mandeville Trailhead Depot for the purpose of conducting their Third Annual Ozone Songwriter Festival on November 5th and 6th, 2022; and

WHEREAS, the City has a reasonable expectation of receiving benefit or value described in detail that is at least equivalent to or greater than the consideration described in the Agreement; and

WHEREAS, the transfer or expenditure of public funds or property is not a gratuitous donation; and

WHEREAS, it will best serve the needs of both Ozone Music Education Foundation, Inc. and the City if the parties were to act cooperatively to accomplish the mutual goal of providing cultural arts programs and services to the City’s constituents; and

WHEREAS, the City and Ozone Music Education Foundation, Inc. have agreed to a cooperative endeavor agreement for expense sharing of management and operation of the Fourth Annual Ozone Songwriter Festival; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Mandeville, hereby authorizes and empowers the Mayor of the City to execute the attached Cooperative Endeavor Agreement between the City and Ozone Music Education Foundation, Inc. for expense sharing of management and operation of the Third Annual Ozone Songwriter Festival.

With the above resolution having been properly introduced and duly seconded, the vote was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the resolution was declared adopted this _____ day of _____, 2022.

Kristine Scherer
Clerk of Council

Rick Danielson
Council Chairman

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN:

OZONE MUSIC EDUCATION FOUNDATION, INC.

AND

CITY OF MANDEVILLE

BE IT KNOWN AND REMEMBERED, that this agreement has been entered into and is effective as of this ____ day of _____ 2022, between the:

City of Mandeville, a municipal corporation of the State of Louisiana situated in St. Tammany Parish, Louisiana, appearing herein through its Mayor, the Honorable Clay Madden, being domiciled at 3101 East Causeway Approach, Mandeville, Louisiana 70448. (hereinafter referred to as the “City”;

And,

Ozone Music Education Foundation, Inc., a 501(c)3 tax exempt nonprofit organization, authorized to do and doing business in the State of Louisiana, represented herein by Randy P. Russell, its duly authorized Agent, pursuant to a Certificate of Good Standing annexed hereto and made a part hereof, being domiciled at 40255 Crowes Landing Road, Pearl River, LA 70452. (hereinafter referred to as the “Ozone”).

ARTICLE I

WITNESSETH:

1.1 WHEREAS, Article VII, Section 14(c) of the Constitution of the State of Louisiana provides that “for a public purpose, the state and its political subdivisions . . . may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual;” and

1.2 WHEREAS, the City desires to cooperate with Ozone as hereinafter provided;

1.3 WHEREAS, Ozone’s mission is to enhance the appreciation and education of music for the people of St. Tammany Parish by providing both children and adults within the community with music education and support their endeavors in songwriting and other careers within the music industry;

1.4 WHEREAS, to support their mission, Ozone has organized the Fourth Annual Ozone Songwriter Festival on November 5th and 6th, 2022;

1.5 WHEREAS, the City owns and operates the Mandeville Trailhead Depot at 675 Lafitte Street, Mandeville, Louisiana, 70448;

1.6 WHEREAS, Ozone desires to use the Mandeville Trailhead Depot for the purpose of conducting the Fourth Annual Ozone Songwriter Festival;

1.7 WHEREAS, the programs and services provided by Ozone benefit the community through cultural arts; which serves a public benefit and serves a public purpose;

1.8 WHEREAS, the City has a reasonable expectation of receiving benefit or value described in detail that is at least equivalent to or greater than the consideration described in this Agreement;

1.9 WHEREAS, the transfer or expenditure of public funds or property is not a gratuitous donation;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE II

PURPOSE

The purpose of this Agreement is to set forth the terms under which the City and Ozone will partner to hold the Fourth Annual Ozone Songwriter Festival at the Mandeville Trailhead Depot.

ARTICLE III

MANGEMENT AND OPERATION

3.1 The City shall be responsible for providing activity space, barricades, and trash cans to conduct approved programs activities.

3.2 Ozone shall be responsible for soliciting people to participate in program/activities.

3.3 Ozone shall be responsible for all costs for personnel and activities related to the production of the Fourth Annual Ozone Songwriter Festival.

3.4 Ozone shall be responsible for all equipment, security, personnel and other such cost associated with said event.

3.5 Ozone shall be responsible for the Sound Engineer's delivery of all PA/Audio equipment to the Depot Room and/or to the Trailhead Stage Storage Room/Closet on Friday November 4, 2022, between the hours of 9:00AM-4:00PM, which delivery shall be completed by 4:00PM. Ozone is authorized and shall be allowed to setup the Depot Room, including PA/Audio equipment, on Friday November 4, 2022, between the hours of 9:00AM-4:00PM, which setup shall be completed by 4:00PM.

3.6 Ozone shall be responsible for the installation of the Ozone banner on gates and backdrop of Trailhead Stage no later than 4 p.m. on Friday, November 4, 2022.

3.7 Ozone shall be responsible for providing Trailhead Market Entertainment on Saturday, November 5, 2022, from 9:00AM-1:00PM, and must have stage setup at 8:30 AM. Ozone is authorized and shall be allowed, during the Trailhead Market Entertainment, to announce over the Trailhead Stage PA system information about the Ozone Songwriter Festival.

3.8 Ozone shall be responsible for setup and breakdown of the Festival between the hours of 7:00AM – 6:00PM, and the Festival shall take place from 2:00PM- 5:00PM on Saturday, November 5, 2022.

3.9 Ozone is authorized and shall be allowed to stage two (2) pop-up tents on the grassy mount at noon on Saturday, November 5, 2022.

3.10 Ozone shall host Festival events on the Trailhead Stage from 11:00AM-5:00PM, with set up and breakdown from the hours of 9:30AM-6:00PM on Sunday, November 6, 2022.

3.11 Ozone shall host Festival events in the Depot Room from 11:00AM-5:00PM, with set up and breakdown from the hours of 9:30AM-6:00PM on Sunday, November 6, 2022.

3.12 Ozone shall finalize breakdown of Depot Room between 10:00AM-2:00PM on Monday, November 7, 2022.

ARTICLE IV

TERMINATION FOR CAUSE

4.1 The City may terminate this Agreement for cause based upon the failure of Ozone to comply with the terms and/or conditions of the Agreement; provided that the City shall give Ozone written notice specifying Ozone's failure. If within thirty (30) days after receipt of such notice, Ozone shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days begun in good faith to correct said failure and thereafter proceeded diligently to

complete such correction, then the City may, at its option, place Ozone in default and the Agreement shall terminate on the date specified in such notice. The City may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of Ozone to comply with the terms and conditions of this Agreement; provided that the City shall give Ozone written notice specifying Ozone's failure and a reasonable opportunity for the Ozone to cure the defect.

ARTICLE V

TERMINATION FOR CONVENIENCE

5.1 Any party shall have the right to terminate this Agreement at its convenience upon thirty (30) day advance written notice to the other party.

ARTICLE VI

ASSIGNMENT

6.1 Ozone shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the City. Notice of any such assignment or transfer shall be furnished promptly to the City. Additionally, Ozone shall not subcontract any services in connection with this Agreement without the prior written consent of the City.

ARTICLE VII

AMENDMENTS IN WRITING

7.1 This Agreement may be amended only by written instrument executed by the authorized representatives of each party, and no oral agreement shall be binding on either party unless / until reduced to writing.

ARTICLE VIII

TERM OF AGREEMENT

8.1 The term of this Agreement shall be in effect from the date of execution through the 9th day of November, 2022.

ARTICLE IX
INDEMNIFICATION

9.1 Ozone shall indemnify, defend, and save harmless the City against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money to any party accruing against the City growing out of, resulting from, or by reason of any act or omission of Ozone, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement. Such indemnification shall include the City's fees and costs of litigation, including, but not limited to, reasonable attorney's fees.

ARTICLE X
INSURANCE

10.1 Ozone undertakes and agrees, at its own expense, to provide and maintain in full force and effect at all times during the initial term or any renewal term of this Agreement Commercial General Liability Insurance in an amount not less than a combined single limit of one million dollars for bodily injury and one million dollars for property damage. This policy should be endorsed to name City as an additional insured. It is the intent of the City that the policy coverage should not be limited by an annual aggregate limitation. If this policy is to be limited by an aggregate annual limitation, the aggregate limitation shall not be less than one million dollars.

10.2 All coverage required by this section shall be effective under insurance policies issued by solvent insurance carriers qualified to do business in the State of Louisiana and having an A.M. Best Company rating of B+VII or better. This rating requirement is waived for the workers compensation only. City reserves the right to inspect any and all insurance policies required pursuant to this Agreement, prior to commencement of the services specified in the Agreement and anytime thereafter.

10.3 A Certificate of Insurance evidencing proof that such insurance coverage exists shall be furnished to City by Ozone before any part of the service specified by this Agreement are commenced. The said Certificate shall name city as an additional insured and include a provision that in case of cancellation or any material change in the coverage stated above City shall be notified thirty (30) days prior to such change or cancellation. Said provision shall include cancellation for nonpayment of premium.

10.4 Ozone and all of its insurers shall, in regard to the above stated insurance, waive all right of recovery or subrogation against City, its officers, agents, or employees and its insurance companies.

10.5 City will give Ozone prompt notice in writing if the institution of any suit or proceeding and permit Ozone to defend same, and will give all needed information, assistance, and authority to enable Ozone to do so. Ozone shall similarly give City immediate notice of any suit or action filed or prompt notice of any claim arising out of the performance of the Agreement. Ozone shall immediately provide City with copies of all pertinent papers received by Ozone pursuant to this provision of the Agreement.

10.6 If any part of the services specified by this agreement is sublet, similar insurance shall be provided by or on behalf of the subcontractor to cover their operations, and evidence of such insurance, satisfactory to City, shall be furnished by Ozone.

ARTICLE XI

PARTIAL INVALIDITY; SEVERABILITY

11.1 If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition, or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XII

ENTIRE AGREEMENT; MODIFICATION

12.1 This Agreement, including any attachments that are expressly referred to in this Agreement, contains the entire agreement between the parties and supersedes any and all agreements or contracts previously entered into between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. This Agreement may be modified or amended at any time by mutual consent of the parties, provided that, before any modifications or amendments shall be operative and valid, it shall be reduced to writing and signed by both parties.

ARTICLE XIII
CONTROLLING LAW

13.1 The validity, interpretation, and performance of this Agreement shall be controlled by and construed in accordance with the laws of the State of Louisiana.

ARTICLE XIV
RELATIONSHIP BETWEEN THE PARTIES; EXCLUSION OF BENEFITS

14.1 Ozone is engaged by the City for the purposes set forth in this Agreement. The relationship between Ozone and the City shall be, and only be, that of an independent contractor and Ozone shall not be construed to be an employee, agent, partner of, or in joint venture with, the City.

ARTICLE XV
**ACKNOWLEDGMENT OF EXCLUSION OF
WORKER'S COMPENSATION COVERAGE**

15.1 The City and Ozone expressly agree that Ozone is an independent contractor as defined in R.S. 23:1021(7) and, as such, expressly agree that the City shall not be liable to Ozone or to anyone employed by Ozone for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana.

ARTICLE XVI
**ACKNOWLEDGEMENT OF EXCLUSION OF
UNEMPLOYMENT COMPENSATION COVERAGE**

16.1 The City and Ozone expressly declare and acknowledge that Ozone is an independent contractor and, as such, is being engaged by the City under this Agreement as noted and defined in R.S. 23:1472(12)(E) and, therefore, it is expressly declared and understood between the parties hereto, that for the purposes of unemployment compensation only;

- a. Ozone has been and will be free from any control or direction by the City over the performance of the service covered by this Agreement;
- b. The services to be rendered by Ozone are outside the normal course and scope of the City's usual business; and,

c. Ozone is customarily engaged in an independently established trade, occupation, profession, or business. Consequently, neither Ozone nor anyone employed or contracted by Ozone shall be considered an employee of the City for the purposes of unemployment compensation and workers compensation coverages.

ARTICLE XVII

FORCE MAJEURE

17.1 Neither party to this Agreement shall be responsible to the other party hereto for any delays or failure to perform caused by any circumstances reasonably beyond the immediate control of the party prevented from performing, including, but not limited to, acts of God.

ARTICLE XVIII

REMEDIES FOR DEFAULT

18.1 In the event the Customer defaults on this Agreement, breaches the terms of this Agreement, or ceases to do business during the term of this Agreement, this Agreement shall be terminated, and within thirty (30) days of such termination the City shall no longer be obligated to provide activity space, barricades, and trash cans to the Customer as provided under this Agreement.

ARTICLE XIX

JURISDICTION

19.1 The parties hereby agree that any disputes that may arise under the terms of this Agreement shall be subject to the jurisdiction of the 22nd Judicial District Court for the Parish of St. Tammany and shall be interpreted according to the laws of the State of Louisiana.

ARTICLE XX

NON-DISCRIMINATION

20.1 The parties agree not to discriminate on the basis of religion, race, color, sex, national origin, age, disability status, ethnicity, military/veteran status, sexual orientation, gender identification, genetic information, marital status, citizenship status, or any other characteristic, unless required by law.

ARTICLE XVIII

NOTICES

21.1 All notices and other communications pertaining this Agreement shall be in writing and shall be transmitted either by personal hand-delivery (and receipted for) or deposited in the U.S. Mail, as certified mail, return receipt requested and postage prepaid, to the other party, addressed as follows:

To: Ozone Music Education Foundation, Inc.

Attn: Randy Russell
40225 Crowes Landing Road
Pearl River, Louisiana 70452

To: City of Mandeville

Honorable Clay Madden
Mayor, City of Mandeville
3101 E. Causeway Approach
Mandeville, Louisiana 70448

THIS AGREEMENT is executed in triplicate original on the dates hereinafter shown, and in testimony whereof the parties have signed in their respective capacities in the presence of the undersigned competent witnesses

City of Mandeville

Signature: _____ Date: _____
CLAY MADDEN, Mayor of the City of Mandeville

WITNESS _____
Printed _____

Ozone Music Education Foundation, Inc.

Signature: _____ Date: _____
**Randy P. Russell, Authorized Agent
For and on Behalf of Ozone Music Education
Foundation, Inc.**

WITNESS _____
Printed _____

