

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

RESOLUTION NO. 23-06

**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 NORTHSORE MANDEVILLE KIWANIS; 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, Kiwanis is a not-for-profit corporation under the laws of Louisiana, that provides volunteer services within the Northshore community in St. Tammany Parish; and

WHEREAS, Kiwanis also accepts funds and/or services from other sources and uses those funds and/or services to provide education and enjoyment, to enhance the quality of life of the residents of the City of Mandeville; and

WHEREAS, the City desires to cooperate with Kiwanis in the implementation of various agreements in the operation of various events through use of City owned and operated multipurpose space, including but not limited to the Trailhead, Lakefront, or other facilities, which are hereinafter provided; and

WHEREAS, the City is the owner and operator of the Mandeville Trailhead Depot located at 675 Lafitte Street, Mandeville, LA 70448, at which location there is a periodic concession stand; and

WHEREAS, the City desires to provide a portion of its sales generated from the concession stand to Kiwanis in exchange for Kiwanis’ volunteer efforts associated with the periodic operation of the concession stand; 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 Kiwanis 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 Kiwanis have agreed to a cooperative endeavor agreement for the periodic operation of City concession stands; 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 Northshore Mandeville Kiwanis.

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 March, 2023.

Kristine Scherer
Clerk of Council

Rick Danielson
Council Chairman

COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF MANDEVILLE

AND

NORTHSHORE MANDEVILLE KIWANIS

BE IT KNOWN AND REMEMBERED, that this Cooperative Endeavor Agreement (the “Agreement”) has been entered into and is effective as of this ____ day of _____, 2023 between the:

City of Mandeville, a Louisiana municipal corporation domiciled at 3101 East Causeway Approach, Mandeville, Louisiana 70448, hereinafter referred to as the “City” and represented herein by the Honorable Clay Madden, Mayor, duly authorized to act by virtue of Resolution of the City of Mandeville Council,

and

Northshore Mandeville Kiwanis, hereinafter referred to as “Kiwanis”, a Louisiana non-profit corporation registered in the State of Louisiana, herein represented by the President of the Kiwanis Club, domiciled at 196 St. Calais Place, Madisonville, Louisiana. 70447.

The above captioned parties hereinafter may be collectively referred to as “Parties” an individually as “Party”, who jointly enter into this Agreement with the intent and desire to better serve all the citizens, the communities of this Parish and the City of Mandeville to the fullest extent of the law;

WHO DECLARE AS FOLLOWS:

ARTICLE I

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 has all powers not denied by any charter or general law or inconsistent with the Constitution, including but not limited to the authority to exercise general police power, as well as to pass ordinances to promote, protect, and preserve the general welfare, safety, health, peace, and good order of the City;

1.3 **WHEREAS**, the City has the authority to enter into this Agreement as evidenced by its governmental purpose of promoting the arts and culture throughout the Parish and the City of Mandeville through mutually beneficial agreements with Kiwanis;

1.4 **WHEREAS**, Kiwanis is a not-for-profit corporation under the laws of Louisiana, that provides volunteer services within the Northshore community in St. Tammany Parish;

1.5 **WHEREAS**, Kiwanis also accepts funds and/or services from other sources and uses those funds and/or services to provide education and enjoyment, to enhance the quality of life of the residents of the City of Mandeville;

1.6 **WHEREAS**, the City desires to cooperate with Kiwanis in the implementation of various agreements in the operation of various events through use of City owned and operated multipurpose space, including but not limited to the Trailhead, Lakefront, or other facilities, which are hereinafter provided;

1.7 **WHEREAS**, the public purpose of this endeavor is to improve the quality of life, increase and educational opportunities for children and families (the “Services”);

1.8 **WHEREAS**, the City has a reasonable expectation of receiving a 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; and

NOW, THEREFORE, in consideration of the mutual covenants set out below, the parties agree and bind their respective offices as follows:

ARTICLE II

2.1 SCOPE OF SERVICES

Kiwanis will accept use of City-owned and operated property, funds, and/or services from the City and use the City-owned and operated property, funds, and/or services to provide programs and resources to children’s programs within the Mandeville area.

2.2 OBLIGATIONS OF THE CITY

The City agrees and obligates itself as follows:

1. To provide the necessary space subject to availability for the operation of concession stand during Mandeville Live events at the Trailhead ;
2. Pay five (5%) of concessions sales from every Mandeville Live event held at the Trailhead during the 2022 season;
3. To pay for all costs associated with operating the facility;
4. To pay for the utilities for the building;

5. To designate a city official as a liaison between Kiwanis and the City.

2.3 OBLIGATIONS OF KIWANIS

Kiwanis agrees and obligates itself as follows:

1. To setting up and planning concessions stand operations during all Mandeville Live events during the 2022 season ;
2. To manage the sales of drink concessions during all Mandeville Live events during the 2022 season;
3. To breakdown concessions stand immediately following each Mandeville Live event;
4. To provide staff for instruction set up, duration, and clean up after the event;
5. To work with City employees to lock and secure the building after each day that programs are held;
6. To provide secondary insurance for liability purposes; and
7. To work closely with the Cultural Development Director to ensure that the facility is available and prepared for all events.

ARTICLE III TERMS OF THE AGREEMENT

3.1 This Agreement may be renewed on an annual basis thereafter unless it is terminated in accordance with the termination provisions set forth herein. The duration of this contract may be modified by a duly executed, written amendment to this Contract.

ARTICLE IV TERMINATION FOR CONVENIENCE

4.1 Either party may terminate this Agreement at any time provided that the terminating party give fifteen (15) days written notice to the other party.

4.2 To the extent that funds are no longer available to pay or reimburse Kiwanis for the services to be rendered under the terms of this Agreement due to budgetary reductions or changes in funding priorities by the City, Kiwanis shall be relieved from any further obligation to perform any of such services to be rendered under the terms of this Agreement provided the City give thirty (30) days written notice.

ARTICLE V CANCELLATION OF TERMS

5.1 If this agreement is cancelled, both parties will work together to make the transition easy so that the public is not affected.

ARTICLE VI OWNERSHIP OF MATERIALS

6.1 All records, reports, documents, and other materials delivered or transmitted to City by Kiwanis, shall remain the property of the City subject to any and all intellectual property rights retained by Kiwanis. Similarly, all records, reports, documents, and other materials delivered or transmitted to Kiwanis by the City shall remain the property of Kiwanis subject to any, and all intellectual property rights retained by the City.

ARTICLE VII
ASSIGNMENT

7.1 Kiwanis 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.

ARTICLE VIII
FISCAL FUNDING

8.1 The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the City of Mandeville. If the City fails to appropriate sufficient monies to provide for the continuation of this Agreement, or if such appropriation is reduced by any means provided in the appropriations act, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Agreement, this Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

ARTICLE IX
DISCRIMINATION CLAUSE

9.1 Kiwanis agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, as amended, the Age Act of 1975, as amended, and Kiwanis agrees to abide by the requirements of the Americans with Disabilities Act of 1990, as amended.

9.2 Kiwanis agrees not to discriminate in its employment practices and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Kiwanis acknowledges and agrees that any act of unlawful discrimination committed by Kiwanis, or any other failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement.

ARTICLE X
INDEMNIFICATION; INSURANCE

10.1 Kiwanis shall indemnify and save harmless the City, its agents, insurers, assigns, successors, affiliates, and subsidiaries 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 Kiwanis, 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.

10.2 Kiwanis shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

10.3 The City maintains insurance on its immovable property and any allegations as to defects in its property will be referred to the City's insurers.

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
CONTROLLING LAW

12.1 This is a Louisiana contract, and all of its terms shall be construed in accordance with and all disputes shall be governed by the laws of the State of Louisiana, of the United States of America; and all parties submit themselves to the jurisdiction and venue of the 22nd Judicial District Courts located in the Parish of St. Tammany, in the State of Louisiana, in the event of any legal proceedings in connection with this Agreement. Both parties agree and hereby attest that they have thoroughly read and reviewed the entire agreement and are familiar with all of the terms and conditions. Both parties attest that they have the authority to sign on behalf of their agency.

ARTICLE XIII
NOTICES

13.1 All notices and other correspondence pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand-delivery (and receipted for) or deposited in the United States mail, as certified mail, return receipt requested and postage prepaid, to the other party, addressed as follows:

As to the City of Mandeville:
Honorable Clay Madden
Mayor, City of Mandeville
3101 East Causeway Approach
Mandeville, Louisiana 70448

As to Northshore Mandeville Kiwanis Club
President, Northshore Mandeville Kiwanis Club
196 St. Calais Place
Madisonville, Louisiana 70447

ARTICLE XIV
LEGAL COMPLIANCE

14.1 The City shall comply with all federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Governmental Ethics (R.S. 42:1101, et seq.) in carrying out the provisions of this Agreement.

ARTICLE XV
RELATIONSHIP BETWEEN THE PARTIES; EXCLUSION OF BENEFITS

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

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

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

ARTICLE XVII
**ACKNOWLEDGMENT OF EXCLUSION OF
UNEMPLOYMENT COMPENSATION COVERAGE**

17.1 The City and Kiwanis expressly declare and acknowledge that Kiwanis is an independent contractor and, as such, is being engaged by the State and/or Agency 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) Kiwanis has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement;
- (b) The services to be rendered by Kiwanis are outside the normal course and scope of the City's usual business; and
- (c) Kiwanis is customarily engaged in an independently established non-profit corporation.

Consequently, neither Kiwanis nor anyone employed or contracted by Kiwanis shall be considered an employee of the City for the purpose of unemployment compensation coverage.

ARTICLE XVIII
FORCE MAJEURE

18.1 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 XIX
ENTIRE AGREEMENT; MODIFICATION

19.1 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.

19.2 This Agreement may be modified or amended at any time by mutual consent of the parties, provided that, before any modification or amendment shall be operative and valid, it shall be reduced to writing and signed by both parties.

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:
Signature: _____ Date: _____
Printed: _____

NORTSHORE MANDEVILLE KIWANIS

Signature: _____ Date: _____
Club President

Witness:
Signature: _____ Date: _____
Printed: _____

