

**MEMORANDUM OF UNDERSTANDING
FOR THE CONTINUED DEVELOPMENT OF UNCOMMON GROUND
BY AND BETWEEN**

**THE CITY OF EDMOND, OKLAHOMA, THE EDMOND PUBLIC WORKS AUTHORITY,
FRENCH FAMILY CHARITABLE FOUNDATION, EDMOND PUBLIC CONCERVANCY
TRUST AND FINE ARTS INSTITUTE OF EDMOND.**

THIS MEMORANDUM OF UNDERSTANDING (the "*MOU*") made as of the ____ day of _____, 2023, is entered into by and among THE CITY OF EDMOND, OKLAHOMA, an Oklahoma municipal corporation (the "*City*"), THE EDMOND PUBLIC WORKS AUTHORITY, an Oklahoma public trust (the "*EPWA*"), FRENCH FAMILY CHARITABLE FOUNDATION, an Oklahoma charitable organization, EDMOND PARK CONCERVANCY TRUST, an Oklahoma public trust (the "*Conservancy*"), and FINE ARTS INSTITUTE OF EDMOND, an Oklahoma charitable organization, or its assigns ("*FAI*"). The City, the EPWA, Conservancy and FAI are each a "*Party*" and collectively referred to herein as the "*Parties*". This MOU is subject to agreement between the Parties upon additional written agreements containing the specific terms and conditions the Parties find acceptable, which must be authorized, approved, and executed as required by law before creating any legally binding obligations.

RECITALS

WHEREAS, the Uncommon Ground Sculpture Park ("Uncommon Ground") development project was envisioned and proposed by the French Family Charitable Foundation ("Foundation") to the City in 2022 and contemplated the eventual development of approximately sixty-two (62) acres of previously undeveloped property generally located on the northwest corner of East 2nd Street and North Coltrane Road in Edmond, Oklahoma ("Project Area");

WHEREAS, the Foundation is the record title holder to the Project Area and, subject to certain commitments by the City and the EPWA, is willing to donate the Project Area to the Conservancy to facilitate the Project;

WHEREAS, the FAI desires to construct a multi-use art center, which includes an event center, gallery spaces, office spaces, and art education classrooms ("Art & Event Center") in the Project Area;

WHEREAS, the FAI desires to partner with the City of Edmond's Visual Art Commission, the Parks Department, and the Conservatory to provide the infrastructure, park maintenance, sculptures and installations for the outdoor sculpture park ("Public Art Sculpture Park") as well as restaurants and retail opportunities ("Restaurant & Retail Area") in the Project Area which fronts East 2nd Street;

WHEREAS, the construction and operation of the Art & Event Center, Public Art Sculpture Park and Restaurant & Retail Area (collectively, the "Project") will generate substantial private investment, generate significant revenue for the City and contribute to the quality of life in the community; and

WHEREAS, the projected investment and development will generate direct and indirect benefits to the City and its citizens; and

WHEREAS, the City stands to realize significant net direct value from the Art & Event Center and Public Art Sculpture Park, as well as from sales tax revenue generated from the further development of the Restaurant & Retail Area and tax revenue generated in other parts of the City as a direct result of the development of the Project; and

WHEREAS, the undertaking of the Project is a complex process, which will require the mutual agreement of the Parties and their timely actions on matters appropriate or necessary to Project implementation; and

WHEREAS, to facilitate the Project, the Parties intend to enter into this MOU to establish a framework for the Project and the separate Agreements that will describe the specific terms on which components of the Project will be implemented and financed; and

WHEREAS, capitalized terms shall have the meanings as defined herein; and

WHEREAS, it is desirable, appropriate, and in the public interest to approve this MOU to facilitate further development of the Project Area, as defined herein.

NOW, THEREFORE, in consideration of the premises and mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the others as follows:

SECTION 1. DEFINITIONS AND PURPOSE.

a. When used herein, the terms below shall have the following definitions:

"*Agreements*" shall mean one or more separate agreements describing the specific terms on which each component of the Project will be implemented and financed.

"*Art & Event Center*" shall mean the multi-use art center, which includes an event center, gallery spaces, office spaces, and art education classrooms described herein.

"*Art & Event Center Tract*" shall mean that certain ____ acres more or less acre tract in the ____ portion of the Project Area, which will be the site for the Art & Event Center, and more specifically set forth on Exhibit B, attached hereto.

"City" shall mean The City of Edmond, Oklahoma, an Oklahoma municipal corporation, acting by and through its City Council.

"Design Guidelines" shall mean the applicable design guidelines for development as may be approved and amended from time to time by the City, as described in Section 4 herein.

"EPWA" shall mean the Edmond Public Works Authority, an Oklahoma public trust.

"EVAC" shall mean the Edmond Visual Arts Commission, which is an entity of the City.

"Infrastructure Improvements" shall mean the development and performance of the construction of the infrastructure (including, without limitation, clearing, grading, paving, storm sewer, sanitary sewer, and water distribution), including all related engineering, necessary to facilitate the construction of the Art & Event Center, Public Art Sculpture Park and Restaurant & Retail Area, as further described herein.

"MOU" shall mean this Memorandum of Understanding dated as of December __, 2023, by and between the Parties.

"Master Plan" shall mean the master plan or plans for development of the property within the Project Area, attached as Exhibit A.

"Parties" shall mean the City, EPWA, Conservancy and FAI.

"Project" shall mean the design, financing, and construction of an Art & Event Center, Public Art Sculpture Park and Restaurant & Retail Area within the Project Area, and all other activities contemplated by this MOU.

"Project Area" shall mean, generally, the area located on the northwest corner of East 2nd Street and North Coltrane Road in Edmond, Oklahoma.

"Public Art Sculpture Park" shall mean that certain ____ acres more or less in the Project Area which excludes the Art & Event Center Tract and Restaurant & Retail Area, which will be the site for the Public Art Sculpture Park, and more specifically set forth on Exhibit B, attached hereto.

"Restaurant & Retail Area" shall mean that certain ____ acres more or less in the Project Area which fronts East 2nd Street, which will be the site for the development of Restaurant & Retail, and more specifically set forth on Exhibit B, attached hereto.

b. The purpose of this MOU is to establish the relationship of the Parties, a framework for implementing the Project, and the processes for the actions and approvals necessary to achieve the objectives of the Parties with respect to the Project, including the intention to enter

into one or more separate Agreements describing the specific terms on which components of the Project will be implemented and financed.

SECTION 2. SCOPE OF THE PROJECT.

The Project contemplates further economic development of the Project Area, including the design, financing, and construction of the Art & Event Center, Public Art Sculpture Park and Restaurant & Retail Area all through the cooperative efforts of the Parties in accordance with this MOU. The Project will be financed from private and public sources, and will require a combination of private and public actions and assistance for implementation.

SECTION 3. RELATIONSHIP OF THE PARTIES.

The undertaking of the Project is a complex process, which will require the mutual agreement of the Parties and their timely actions on matters appropriate or necessary for Project implementation. The Parties shall use their best efforts in good faith to perform and assist others in performing their respective obligations under this MOU and the Agreements.

SECTION 4. MASTER PLAN AND DESIGN GUIDELINES.

The Parties intend that development of the Project within the Project Area will proceed in accordance with the requirements of a Master Plan for development and Design Guidelines. The City, FAI and the Conservancy may propose further amendments to the Master Plan and Design Guidelines as necessary to facilitate development consistent with City of Edmond ordinances.

The FAI, the Conservancy and the City may from time to time propose Design Guidelines for areas and/or other types of development, as appropriate, and amendments and supplements to the applicable Design Guidelines as development proceeds. The Design Guidelines are guidelines governing the specific design and development of improvements of the respective portions of the Project Area.

The Parties acknowledge that the Master Plan is conceptual in nature and is not intended to constitute rigid requirements. Rather it is meant to describe the intended conceptual development of the Project, and the Parties acknowledge that such plans will evolve over time as development proceeds. Similarly, the Design Guidelines will be subject to change as development proceeds to reflect not only the evolving development but also evolving technologies, materials and architectural concepts. The Parties agree to proceed in good faith in proposing and adopting amendments to the Master Plan and Design Guidelines as necessary to address evolving conditions, all consistent with the intent to assure a development of the nature described in the Master Plan.

SECTION 5. OBLIGATIONS AND RESPONSIBILITIES OF THE FAI.

Without limitation of any other obligation under this MOU, the FAI shall:

- a. Implement a capital campaign to raise the funds needed to build the new Art & Event Center in the Project Area.
- b. Investigate with all parties a sustainable financial arrangement for the operation of Art & Event Center and lease or ownership of Art & Event Center Tract.
- c. Investigate how to incorporate funds raised for the Art & Event Center with Conservancy funds.
- d. Provide office space for EVAC and Conservancy employees in the Art & Event Center as necessary and reasonable.
- e. Assume operational responsibility and management for the Art & Event Center, galleries, event center, and any other developments approved by the Conservancy.
- f. Provide year-round community programming in the Public Art Sculpture Park dedicated to advancing the arts, culture, and tourism that align with the mission of FAI.
- g. Provide scholarships for families who meet financial aid requirements if fees are required for classes, workshops, or other art related events held in the Art & Event Center.
- h. Work with City to protect the vision and integrity of the Public Art Sculpture Park and facilities developed on the land and serve as the curator of the art installations throughout the entire existence of the Project.
- i. Select a designated staff or board member to represent FAI on the Conservancy.

SECTION 6. OBLIGATIONS AND RESPONSIBILITIES OF THE CONSERVANCY.

Without limitation of any other obligation under this MOU, the Conservancy shall:

- a. Negotiate and approve Agreements (including, without limitation, all ancillary documents thereto, e.g., the Art & Event Center Tract Purchase/Lease Agreement) where necessary or appropriate to implement the Project.
- b. In cooperation with the FAI, prepare and submit a proposed Master Plan evidencing the location and general description of the Art & Event Center, Public Art Sculpture Park and Restaurant & Retail Area.

- c. In cooperation with the FAI, prepare and submit Plat, Site Plan or Site Plan amendments, as necessary, to the City of Edmond for review and approval.
- d. Cause development of Project to occur in compliance with applicable laws, ordinances, and regulations.
- e. Recommend proposed financing arrangements for the Project.
- f. Enter into any necessary contracts on mutually agreeable terms which shall include the commitments of the Conservancy to undertake the responsibility to administer such contracts on behalf of the City.
- g. Work with City and EPWA and Foundation for necessary easements needed for all future infrastructure needs, including bike trail connectivity, utility services, and miscellaneous others.
- h. Work with City and EPWA on a long-term agreement for the Conservancy's responsibility for grounds maintenance and mowing of detention facility(s) after completion of construction.
- i. In cooperation with the FAI, provide the City with the necessary information required to approve permits for any sculptures or miscellaneous improvements installed by the Conservancy in the floodplain.
- j. Determine, with input from EVAC and the FAI, the location of all public art installed in the Public Art Sculpture Park.
- k. Communicate and work with City to provide pedestrian access (including ADA) east of restaurants to access the Public Art Sculpture Park and public art.
- l. Discuss with Foundation usage of proceeds from the restaurant sites to the Conservancy for Public Art Sculpture Park operational and maintenance needs.
- m. Investigate with all parties the plan to transfer land ownership from the Foundation to Conservancy to implement the Project.
- n. Amend the Conservancy organizational documents to include one representative from FAI.

SECTION 7. OBLIGATIONS AND RESPONSIBILITIES OF THE CITY AND/OR EPWA.

Without limitation of other obligations in this MOU, the City or EPWA, whichever is appropriate, shall:

- a. Assign a designated City contact to the Project and ensure all permits for the Public Art Sculpture Park and Art & Event Center are a priority.
- b. Suspend permit fees and monthly utility payments for improvements built on the Public Art Sculpture Park tract, including the Art & Event Center (excluding the restaurants built along 2nd Street).
- c. Site plan approval will be considered and expedited for restaurant pad sites, parking, and detention. (Future buildings will require separate building permits.)
- d. Confirm that neither a traffic study nor street widening is a requirement for FAI or the Foundation for the Project.
- e. When necessary, City will be responsible for road improvements along Coltrane and 2nd Street.
- f. Investigate and allocate a portion of the park tax to the Conservancy annually for park maintenance in the amount the City would spend to maintain a City park of this size and prominence independently.
- g. Clean out the concrete box structure and ditch to the east under Coltrane as needed to allow maximum stormwater flow.
- h. Confirm that alternative sewer methods, as allowed by Oklahoma Department of Environmental Quality ("ODEQ"), are permitted with the understanding that the Art & Event Center, all restaurants, and additional future buildings will be serviced by City of Edmond public sewer.
- i. Beyond the building permit review, acknowledge no further approval is required for the retaining wall along the flood line on the north side of restaurant sites that the Edmond Stormwater Advisory Board has previously approved.
- j. Be responsible for stormwater detention engineering and improvements that serve the Art & Event Center and Huntwick Neighborhood in the Project Area. (Upon completion the Conservancy will be responsible for the grounds maintenance).
- k. Work with the Foundation and EVAC to expedite the installation of the co-funded horse sculpture as close to the intersection of 2nd and Coltrane as possible. The Foundation is willing to donate a sight triangle easement to cover existing utilities if needed.
- l. Ensure R-O-W and easement requirements from the northeast corner of the Project Area, continuing south to the entrance of the Project Area, will remain the same as the Huntwick Addition.

m. Work with the Foundation's representatives, Conservancy, and FAI to provide public infrastructure for the Public Art Sculpture Park and Art & Event Center, such as collector road and parking, bike trails, sidepaths, walking trails, master utilities, lighting, signage, security measures, and other miscellaneous needs by the completion of the Art & Event Center.

n. Make an annual contribution to the Art & Event Center for the public community building, branding and identity, cultural enrichment, education and outreach, philanthropic and grant attraction, and to ensure financial sustainability. (Does not include annual program-specific CARC funding).

SECTION 8. INFRASTRUCTURE IMPROVEMENTS; LAND SALE.

The Project shall be contingent on the actions of the Parties and the further documentation of the proposed agreements which shall facilitate the Project consistent with the outline set forth below:

1. Upon execution of this MOU, the Foundation, City, EPWA, and Conservancy shall proceed with the necessary commitments which shall result in the donation of the Project Area by the Foundation to the Conservancy.
2. Upon the execution of the MOU, the FAI and Conservancy shall proceed with necessary real estate purchase or lease agreements for the sale or lease of the Art & Event Center Tract by the Conservancy to FAI.
3. The City, the EPWA and the Conservancy shall work together in good faith to negotiate a development agreement whereby the City and the EPWA shall construct Infrastructure Improvements to the boundary of the Art & Event Center Tract, for a cost to the City and the EPWA estimated not to exceed \$_____. The engineering services related to the Infrastructure Improvements shall be the sole cost and responsibility of the Conservancy.

SECTION 9. COMPETITIVE BIDDING ACT.

To the extent required by law, any and all contracts, or portions thereof, made for the purpose of constructing public improvements pursuant to this Agreement, shall be made in compliance with the Oklahoma Public Competitive Bidding Act of 1974, Title 61, Oklahoma Statutes, Section 101, et seq., as amended, including, but not limited to, any applicable bonding requirements.

SECTION 10. NO PARTNERSHIP OR JOINT VENTURE CREATED.

This MOU specifically does not create any partnership or joint venture between the Parties hereto, or render any party liable for any of the debts or obligations of any other party.

SECTION 11. FISCAL YEAR LIMITATION.

Throughout this MOU and for purposes of this multi-year understanding, it is the specific intent and understanding of the Parties that all financial obligations intended to be undertaken by any public entity are to be undertaken by the EPWA, not the City, and are subject to all Constitutional and legal limitations.

IN WITNESS WHEREOF, the City, EPWA, Conservancy, FAI and Foundation, as Parties to this MOU, have caused this Memorandum of Understanding to be duly executed and delivered as of the ____ day of _____, 2023.

THE CITY OF EDMOND, OKLAHOMA,
an Oklahoma municipal corporation

By: _____

Name: _____

Title: _____

THE EDMOND PUBLIC WORKS AUTHORITY,
an Oklahoma public trust

By: _____

Name: _____

Title: _____

EDMOND PARK CONSERVANCY TRUST, an
Oklahoma public trust

By: _____

Name: _____

Title: _____

Continued signature page of that certain Memorandum of Understanding by and among the City, EPWA, Foundation, Conservancy and FAI, effective the ___ day of _____, 2023.

FINE ARTS INSTITUTE OF EDMOND, an Oklahoma charitable organization

By: _____

Name: _____

Title: _____

FRENCH FAMILY CHARITABLE FOUNDATION, an Oklahoma charitable organization

By: _____

Name: _____

Title: _____

EXHIBIT A

The Parties agree that the Master Plan is intended to delineate the general framework for the development of the Project Area with respect to uses, development sites or areas, parks and open spaces. The City and the Conservancy shall from time to time prepare proposed supplements and/or amendments to the Master Plan as development proceeds.

[Insert Master Plan]

EXHIBIT B

Property Depiction or Tract Descriptions