



OPCMR

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made this 20th day of October, 2021, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Sports, Parks and Recreation (hereinafter referred to as "Government") and Our Town Frederiksted, Inc. (hereinafter referred to as "Our Town Frederiksted"), each a "Party" and collectively the "Parties."

WITNESSETH:

WHEREAS, St. Croix Education Initiative d/b/a Children First St. Croix is leading a community effort to rebuild and revitalize Midre Cummings Park in Frederiksted, St. Croix U.S. Virgin Islands ("Midre Cummings Park"); and

WHEREAS, the Government owns Midre Cummings Park and has entered into a Public-Private Partnership with St. Croix Education Initiative, Inc., to join efforts in the rebuild and revitalize of Midre Cummings Park (the "Project"); and

WHEREAS, the Government will contribute Four Hundred Thousand and 00/100 Dollars (**\$400,000.00**) to the Project and seeks to utilize a third party to manage the Government's contribution to the Project; and

WHEREAS, Our Town Frederiksted, a non-profit, whose focus is the revitalization of Frederiksted St. Croix has been identified to serve as the third party to manage the Government's contribution to the Project under 31 V.I.C. § 239(a)(8); and

WHEREAS, Our Town Frederiksted represents it is willing and capable of performing its responsibilities under this Agreement; and

WHEREAS, the Parties have a common interest in the revitalization of Midre Cummings Park and seek to combine efforts in furtherance of that common interest.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the Parties hereto do covenant and agree as follows:

1. TERM AND EFFECTIVE DATE

This MOA shall be effective upon the date of execution of this MOA by the Commissioner of the Department of Property and Procurement and shall terminate thirty (30) days after the St. Croix Education Initiative, Inc. turns the completed Midre Cummings Park Project over to the



Government.



OPCMR

2. RESPONSIBILITIES/TASKS OF THE PARTIES

2.1 The Government will be responsible for the following:

- (a) The Government will provide Four Hundred Thousand and 00/100 Dollars (**\$400,000.00**) to Our Town Frederiksted for disbursement to St. Croix Education Initiative, Inc. for the Project, in accordance with the conditions of this MOA; and
- (b) Approving the budget breakdown prepared by St. Croix Education Initiative for use of Government's financial contribution.

2.2 Our Town Frederiksted will be responsible for and agrees to the following conditions:

- (a) Our Town Frederiksted, upon receipt of the Government's contribution of Four Hundred Thousand and 00/100 Dollars (**\$400,000.00**) to the Project will manage the use and disbursement in accordance with the following:
 - i. Funds from the Government's financial contribution shall only be deposited in a separate bank account, owned by Our Town Frederiksted and insured by the FDIC;
 - ii. Funds from the Government's financial contribution shall not be commingled with other funds;
 - iii. Require St. Croix Education Initiative to submit a budget breakdown for the intended use of the financial contribution and submit budget breakdown to the Government for approval before any disbursements to St. Croix Education Initiative, Inc.;
 - iv. All funds must be used to directly support the Project for the purchase of materials, playground equipment and shipping costs ("allowable expenditures");
 - v. Our Town Frederiksted will only disburse funds upon request from St. Croix Education Initiative;
 - vi. All disbursement requests must be supported by invoices for allowable expenditures only;
 - vii. Disbursement shall not exceed disbursement requests and the invoices in support of same;
 - viii. Our Town Frederiksted will maintain an inventory of all items purchased using the Government's contribution;
 - ix. Within ten (10) days of St. Croix Education Initiative, Inc's transfer of the Project to the Government, Our Town Frederiksted will provide the Government with a written report including a full accounting of the Government's contribution, copies of all associated invoices and other supporting documentation and an inventory of all material and equipment purchased using the Government's contribution;
 - x. Upon request of the Government, Our Town Frederiksted will provide additional



OPCMR

information or documentation requested by the Government relative to the use of funds for the Project.

3. RECORDS

Our Town Frederiksted, will present documented precise records of money expended under this MOA and shall maintain all pertinent financial and accounting records pertaining to this Agreement in accordance with generally accepted accounting principles and other procedures.

4. LIABILITY OF OTHERS

Nothing in this MOA shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Our Town Frederiksted as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Our Town Frederiksted of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Our Town Frederiksted, its servants, agents or independent contractors.

5. ASSIGNMENT

Our Town Frederiksted shall not subcontract or assign any part of the services under this MOA.

6. INDEMNIFICATION

Our Town Frederiksted agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Our Town Frederiksted under this MOA and arising from any cause, except the sole negligence of Government.

7. INDEPENDENT CONTRACTOR

Our Town Frederiksted shall perform this MOA as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

8. GOVERNING LAW

This MOA shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

9. WAIVERS AND AMENDMENTS



OPCMR

No waiver, modification or amendment of any term condition or provision of this MOA shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this MOA, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

10. ENTIRE AGREEMENT

This MOA constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

11. CONDITION PRECEDENT

This MOA shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

12. TERMINATION

- (a) Any Party may terminate this Agreement upon fifteen (15) days' notice upon one or more of the following:
 - ii. any Party's violation of any federal, state, or local law or regulation.
 - iii. any Party's breach of any of the terms or conditions of this Agreement that has not been cured within thirty (30) days written notice of such breach.
- (b) A termination for convenience by any Party must occur upon sixty (60) days' notice prior to the groundbreaking at the Project site.
- (c) In the event of a termination of the MOA between the Government and St. Croix Education Initiative Inc., this Agreement will terminate on the same date of termination as the MOA between the Government and St. Croix Education Initiative, Inc.
- (d) In the event of a termination, any unspent portions of the Government's financial contribution shall be returned to the Government within five (5) days of said termination, along with a written report including a full accounting of the Government's contribution, copies of all associated invoices and other supporting documentation and an inventory of all material and equipment purchased using the Government's contribution.



OPCMR

11. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this MOA on account of race, creed, color, sex, religion, disability or national origin.

12. CONFLICT OF INTEREST

Our Town Frederiksted covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOA.

13. NOTICE

Any notice required to be given by the Terms of this MOA shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Anthony D. Thomas

Commissioner

Department of Property and Procurement

8201 Sub Base, Suite 4

St. Thomas U.S. Virgin Islands 00802

anthony.thomas@dpp.vi.gov

Calvert A. White

Commissioner

Department of Sports, Parks and Recreation

8201 Subbase, Suite 206

St. Thomas US Virgin Islands 00802

calvert.white@hpr.vi.gov

Our Town Frederiksted, Inc.

23-A Hospital Street

P.O. Box 653

Frederiksted, VI 00841

aeshadual@yahoo.com

14. LICENSURE

Our Town Frederiksted covenants that to the extent applicable, it has:

General Contract No. G003SPRT22

Initials: _____



OPCMR

- ii. obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code;
- iii. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations; and
- iv. will require compliance with Title 27 of the Virgin Islands Code for all contractors working on the Project.

15. FALSE CLAIMS

Our Town Frederiksted warrants that it shall not, with respect to this MOA, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Our Town Frederiksted acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

16. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this MOA shall be deemed an original and binding upon the Parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]

Calvert White 10/17/2021
Calvert A. White, Commissioner Date
Department of Sports, Parks, and Recreation

[Signature]

Anthony D. Thomas 10/20/2021
Anthony D. Thomas, Commissioner Date
Department of Property and Procurement

[Signature]

OUR TOWN FREDERIKSTED, INC.
Ronald E. Russell 10/19/2021
/s/ Ronald E. Russell 10/7/2021
Ronald E. Russell, Board Chair Date



OPCMR

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:

Carol E. McDowell
Assistant Attorney General

Date 10/20/2021