

**FUNDING AGREEMENT
FOR DOWNTOWN ARTS DISTRICT**

THIS FUNDING AGREEMENT, is made and entered into this ____ day of _____, 2014, by and between the **CITY OF ORLANDO, FLORIDA COMMUNITY REDEVELOPMENT AGENCY**, a body politic and corporate of the State of Florida and a community redevelopment agency created pursuant to Ch. 163, Part III, Florida Statutes (hereinafter referred to as "CRA"), and the **DOWNTOWN ARTS DISTRICT INC.**, a not-for-profit Florida corporation, hereinafter referred to as "DAD."

WHEREAS, DAD is a not-for-profit corporation that is dedicated to furthering the arts in downtown Orlando through various means, including arts facilities development, fundraising, and special events; and

WHEREAS, it is a goal of the Downtown Orlando Community Redevelopment Area Plan ("Plan") to enhance cultural entertainment opportunities and amenities within the downtown arts district of the downtown core; and

WHEREAS, the Plan contemplates that the CRA provide funding and support to arts groups within the Downtown Orlando Community Redevelopment Area ("Area"); and

WHEREAS, DAD, in partnership with the City of Orlando, Orange County and private supporters, leased and renovated the building located at the northeast corner of Orange Avenue and Pine Street ("Building") for the operation of a grass roots multi-use arts facility, known as the "City Arts Factory", that will service citizens and visitors"; and

WHEREAS, DAD operates arts related events within the Area such as Third Thursdays; and

WHEREAS, the CRA has determined that there is a public need for such a multi-use cultural arts facility as an arts destination for downtown Orlando and other arts related events within the Area, and that a valid public purpose in promoting the general health, welfare and safety of the citizens of the City would be served by providing funds for the costs of operating such facility; and

WHEREAS, in order to serve the public need and in furtherance of the public purpose, the CRA has agreed to provide DAD with funding through November of 2016 in order to offset DAD's costs; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **INCORPORATION OF PREAMBLE.** The preamble of this Agreement is incorporated herein as if fully set forth below.

2. **FUNDING.**

A The parties agree that from October 1, 2014 through November 30, 2016, subject to the DAD's compliance with the conditions contained in section 3 of this Amendment, annual funding for each fiscal year from Fiscal Year 2014-2015 through Fiscal Year 2016-2017 shall be provided by the CRA. Annual funding for Fiscal Years 2014-2015 through 2016-2017 is as follows:

Fiscal Year 2014-2015	\$288,000.00
Fiscal Year 2015-2016	\$288,000.00
Fiscal Year 2016-2017	\$ 48,000.00

B. Funding shall be made in monthly payments of \$24,000.00 each month, payable on the first of each calendar month, upon invoice by DAD.

C. It is the intent of the parties that as the City Arts Factory becomes profitable, the funding amount provided by the CRA each year hereunder shall decrease. Therefore, based upon DAD's yearly audited financial statements, the funding amount provided by the CRA will decrease as follows:

<u>Net Income</u>	<u>Decrease</u>
\$50,000-79,999	25%
\$80,000-124,999	50%
\$125,000-175,000	75%
over \$175,000	100%

Each year will be evaluated separately to determine if a decrease in funding is warranted. If a decrease in the funding amount is warranted in any year, then one or more of the monthly payment amounts shall be decreased accordingly as mutually agreed to by the parties. Upon determination that such decrease in funding is warranted as evidenced by the financial statements, the CRA will send a letter to DAD to confirm the new payment amounts and schedule of payments.

3. **CONDITIONS TO FUNDING.** The CRA's obligation to provide the funding provided for herein is expressly contingent upon DAD's compliance with the conditions described below, and the CRA shall not be obligated to provide the funding provided for herein unless DAD meets such conditions at all times during the term of this agreement:

A. DAD shall sublease the Facility from the City of Orlando through at least November 30, 2016 for the operation of the City Arts Factory and shall remain current in all rent payments to the City. The CRA's obligation to provide the funding shall terminate upon the termination of the sublease or underlying lease.

B. DAD shall operate the Facility as a multi-use arts facility including gallery space, artist studios, a gift shop (if allowed under their 501(c)(3) status), meeting space, offices and a theatre for films, live performances and other arts-related uses (the "Operations").

C. DAD shall operate the City Arts Factory during the hours of 11:00 a.m. – 6:00 p.m. Tuesday through Saturday, or during such other times as approved by the CRA.

D. DAD shall provide a minimum of twelve (12) art exhibit opening receptions and changing exhibits per year.

E. DAD shall provide a minimum of one hundred twenty (120) cultural events or live performances per year (including any tenant performances within the Facility).

F. DAD shall schedule at least six (6) workweek lunchtime programs either in the Building or outside in public plazas or the right-of-way (and obtain appropriate permits for right-of-way use as required by City Code).

G. DAD shall continue its Third Thursday events on a monthly basis. Additionally, DAD shall attempt to grow the events to include participation from more downtown businesses and shall increase its marketing of the events to bring more participants.

H. At the request of the CRA, and not to exceed twelve (12) times per year, DAD shall make space available within the Building at no charge to the CRA for meetings associated with CRA work or programs.

I. DAD shall provide quarterly outreach programs to schools within the Area. Additionally, DAD shall work with Orange County arts teachers to host an annual exhibit of the works of art students and teachers.

K. DAD shall continue to operate a mobile art gallery, during which it will facilitate rotating exhibits at different venues within the Area such as Glimpse Gallery at the Downtown Information Center.

L. DAD shall host a minimum of at least six (6) juried art shows per year within the Facility or Downtown CRA Area.

M. During the term of this Agreement, DAD shall provide or operate at least two (2) community arts projects to create interest in the arts community wide and to highlight art within the Area. Orlando Slice and Guitar Town are two examples.

N. DAD shall continue to operate as a properly incorporated not-for-profit corporation.

O. DAD shall have a valid City of Orlando business tax receipt throughout the term of this Agreement.

P. DAD shall collaborate with Mad Cow Theatre and the Dr. P. Phillips Center for the Performing Arts to increase the free arts events available to the public within the Area.

4. PROGRESS AND FINANCIAL REPORTING.

A. Progress Reports. On December 31, March 31, June 30 and September 30 of fiscal years 2014-2015 and 2016-2017 and on December 31 of 2017, DAD shall submit progress and financial reports to the CRA's Executive Director in a form and content acceptable to the Director. Such progress reports shall include, at a minimum, an evaluation of the operation of the

City Arts Factory, arts activities conducted by DAD within the Area during the reporting period, and DAD's compliance with the conditions set forth in section 3 above. Quarterly financial reports shall outline the revenue and expenses of the City Arts Factory.

B. Audited Financial Statements. DAD shall submit audited financial statements showing the yearly revenue and expenses of the City Arts Factory on an annual basis to the Executive Director.

C. Compliance. DAD's failure to comply with the requirement for submission of such reports and financial statements in a form and content acceptable to the Director shall constitute grounds for termination of this Agreement and may result in the ineligibility of DAD to receive contributions from the CRA. Completion of the prior year's reporting requirements, if any, and submission of all required annual audited financial statements are a prerequisite to the CRA's payment of any funds to DAD under this Agreement.

5. **COVENANTS AND REPRESENTATIONS OF DAD.** DAD hereby covenants, represents, and acknowledges the following:

A. Permits. DAD has or will obtain all state and local permits or other governmental authorizations and approvals required by law in order to operate the City Arts Factory.

B. Compliance with City Code. DAD shall at all times be in compliance with the Orlando City Code, including, but not limited to, code sections pertaining specifically to planning, zoning and permitting. This paragraph is not intended to preclude the City of Orlando from granting DAD certain waivers, exemptions or variances under the Orlando City Code as allowed therein.

6. **NONPROFIT STATUS; 501(C)(3) STATUS.** DAD represents and warrants to the CRA that it has applied for and received tax exempt status from the United States Internal Revenue Service ("IRS") as a 501(C)(3) organization. DAD will maintain its tax exempt status with the IRS and its status as an active non-profit corporation in good standing with the State of Florida throughout the term of this Agreement. If DAD should, during the term of this Agreement, lose its IRS tax exempt status or its active corporate or non-profit status with the State of Florida, it will immediately notify the CRA, and the CRA reserves the right to terminate this Agreement immediately and discontinue payments to DAD.

7. **NONDISCRIMINATION.** DAD shall not unlawfully discriminate against any person in providing the Services and will provide the Services in compliance with Chapter 57 of the Code of the City of Orlando, Title VII of the Civil Rights act of 1964 as amended, and any and all other applicable federal, state or local laws, rules or regulations, whether presently existing or hereafter promulgated.

8. **BOOKS AND RECORDS.** DAD will utilize those accounting practices and procedures and maintain those records regarding receipts and disbursements of the funds provided herein as are in accordance with generally accepted accounting principles (GAAP). All such records shall be open to inspection and audit by the CRA or by the CRA's designee during normal business hours during the term of this Agreement. Additionally, DAD will maintain its books and records, and the CRA will be entitled to audit such books and records for a period of three (3) years from the date of the last payment under this Agreement. Any cost incurred by DAD as a result of

an audit shall be the sole responsibility of, and shall be borne by, DAD.

9. **MONITORING.** DAD shall permit the CRA to monitor the operation of the City Arts Factory to ensure compliance with the terms of this Agreement to the extent that such monitoring does not unreasonably interfere with DAD's ongoing operation of the facility. DAD shall provide to the CRA or the CRA's designee access to such records and information as reasonable to assist in such monitoring.

10. **DEFAULT AND TERMINATION.** The following events shall be a default and breach of this Agreement by DAD, and shall entitle the CRA to immediately cease any payments of funding and terminate this Agreement upon twenty (20) days prior written notice to DAD:

A. DAD's failure to comply with the Conditions to Funding contained in section 3 above.

B. DAD's failure to operate the City Arts Factory within the Building.

C. DAD's abandonment of the Building, or eviction by Building Owner or City for violation of the sublease or underlying lease.

11. **INDEMNIFICATION.** DAD agrees to indemnify, defend and hold harmless the CRA, its employees, agents and elected and appointed officials, from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees for trial and on appeal, of any kind and nature arising out of or resulting from DAD's performance of its obligations under this agreement, and which are caused in whole or in part by DAD, its agents, employees or subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

12. **NO WAIVER.** Continued performance by either party hereto, pursuant to the terms of this Agreement, after a default of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

13. **CONSTRUCTION; SEVERABILITY.** This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed by and between the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

14. **NONASSIGNABILITY.** DAD may not assign its rights hereunder without the prior written consent of the CRA, which assignment may be agreed to, denied, or conditioned in part or in whole as CRA deems appropriate in its sole discretion. A successor agency does not automatically have any rights to the Funds disbursed under this Agreement by its position as a successor. A successor agency must receive prior approval from the CRA before it can receive Funds. Failure to comply with this section may result in immediate termination of this Agreement.

15. **THIRD PARTY BENEFICIARY.** This Agreement is solely for the benefit of the parties signing hereto and no right, nor any cause of action shall accrue to or for the benefit of any third party.

16. **NO JOINT VENTURE.** It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship as partner or joint venturers between the parties hereto or as constituting DAD as the agent or representative of the CRA for any purpose or in any manner whatsoever.

17. **VENUE.** Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the circuit court of and for Orange County, Florida and shall be governed by the laws of the State of Florida. DAD agrees to notify the CRA in writing within ten (10) business days of the occurrence of any incident or action such as, but not limited to, lawsuits, injuries, or allegations of abuse or neglect filed against DAD, related to the Services provided under this Agreement.

18. **CORPORATE TABLES/TICKETS.** DAD agrees that, if it holds any fund raising events at the City Arts Factory at which "corporate tables" or tickets for entry into the event are sold, the CRA shall receive, as applicable, one (1) corporate table or tickets in the same number as top level event sponsor, all at no cost in consideration of the contribution provided to DAD under this Agreement.

19. **CREDITS.** DAD shall give written credit to the CRA as a sponsor/financial supporter in all acknowledgments, brochures, catalogues, invitations, press releases, printed materials, and all other marketing, promotion, and advertising relating to the City Arts Factory. The form and manner of such written credit shall be mutually agreed to by the parties.

20. **INSURANCE.** DAD will have in force during the term of this Agreement the insurance coverage listed below. DAD will provide valid Certificates of Insurance to the CRA within ten (10) days of the effective date of this Agreement to verify such coverage. The insurance coverage shall contain a provision which forbids any cancellation, changes or material alterations in the coverage without providing 30 days written notice to the CRA.

a. Commercial General Liability -- DAD will provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will not be less than \$1,000,000 Combined Single Limit (CSL) bodily injury and property damage, or its equivalent.

b. Commercial Automobile Liability -- DAD will provide coverage for all owned, non-owned and hired vehicles for limits of not less than \$500,000 Combined Single Limit (CSL) bodily injury and property damage, or its equivalent.

c. Workers' Compensation -- DAD will provide Workers' Compensation coverage for all employees at the site location and, in case any work is subcontracted, will require the subcontractor to provide Workers' Compensation for all its employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employer's Liability.

d. Employee's Honesty Insurance -- DAD will provide coverage of not less than \$10,000 per occurrence.

21. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statement

heretofore made with respect to such subject matter, whether verbal or written, are merged herein. No other agreement, whether verbal or written, with regard to the subject matter hereof shall be deemed to exist.

22. **NOTICE.** Any notices to be delivered hereunder shall be in writing and shall be deemed to be delivered:

- (i) when hand delivered to the person hereinafter designated,
- (ii) on the date of deposit in the United States Mail, return receipt requested, or
- (iii) on the date such notice is given into the possession of a national delivery company, including but not limited to Federal Express, for delivery requiring signature acceptance,

addressed to a party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith:

CRA: Executive Director
City of Orlando Community Redevelopment Agency
400 South Orange Avenue, 6th Floor
Orlando, Florida 32801

DAD: Chairman
Downtown Arts District, Inc.
424 E. Central Blvd., #362
Orlando, FL 32801

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement for Downtown City Arts Factory as of the day and year first above written.

COMMUNITY REDEVELOPMENT AGENCY

BY: _____
Chairman

ATTEST:

Executive Director

APPROVED as to form and legality,
for the use and reliance of the
CRA of the City of Orlando, Florida only.

_____, 2014.

Assistant City Attorney

DOWNTOWN ARTS DISTRICT, INC.
(Federal ID Number:30-0086039)

BY: _____
Chairman

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me, the undersigned authority, _____, Chairman of the Downtown Arts District, Inc., a Florida not-for-profit corporation, and acknowledged before me that he executed the foregoing instrument on behalf of the corporation as its true act and deed, and that he/she was duly authorized so to do. He/she is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2014.

By: _____
Notary Public
Attach Seal