



Interoffice Memorandum

Sept. 23, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

THRU: Randy Singh, Deputy County Administrator *RS*

CONTACT: Terry Olson, Administrator
Arts and Cultural Affairs Office *T. Olson*

SUBJECT: **Oct. 22, 2019 – Consent Agenda Item**
Funding Agreement relating to FusionFest 2020

Downtown Arts District, Inc. will serve as the fiscal agent for FusionFest, a two-day festival being held on November 28 and 29, 2020, that celebrates cultural diversity in Central Florida with music, dance, food, film, fashion, and spoken-word performances.

This contract facilitates funding that has already been approved by the Board of County Commissioners and is in the current budget.

ACTION REQUESTED: Approval and execution of Orange County, Florida and Downtown Arts District, Inc. Funding Agreement relating to FusionFest 2020 and authorization to disburse \$135,000 as provided in the FY2019-20 adopted budget.

TO/ls

- c. Byron W. Brooks, AICP, County Administrator
- Randy Singh, Deputy County Administrator

ORANGE COUNTY, FLORIDA
and
DOWNTOWN ARTS DISTRICT, INC.
Funding Agreement
relating to
FusionFest 2020

THIS AGREEMENT is entered into as of the date of last execution by and between Orange County, Florida, a charter county and political subdivision of the State of Florida (the "County"), and Downtown Arts District, Inc., a nonprofit corporation under the laws of the State of Florida, ("DAD").

RECITALS

WHEREAS, the Downtown Arts District ("DAD") was established in 2000 as a nonprofit corporation organized under the laws of the State of Florida; and

WHEREAS, DAD's mission is to lead, stimulate and guide the development of a vibrant and innovative arts and cultural district and enhance economic development in Downtown Orlando; and

WHEREAS, DAD with the financial support of the County, the City of Orlando, and private sponsors produces FusionFest; and

WHEREAS, FusionFest 2020 will be a two-day celebration, held in Downtown Orlando, that features a variety of sights, sounds, tastes, textures and short films that represent the diverse origins of the Orange County community; and

WHEREAS, FusionFest 2020 will be offered at no cost to the public and held November 28th and 29th at the Seneff Arts Plaza, Dr. Phillips Center for the Performing Arts, and Orange Avenue at the Orlando City Hall Commons in Downtown Orlando; and

WHEREAS, the County and DAD desire to enter into this Agreement to set forth the understanding between the parties and the respective duties of the parties hereunder.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

Section 1. Recitals. The above recitals and the meanings ascribed to the defined terms contained therein are hereby incorporated herein and made a part of this Agreement.

Section 2. County Payment. The County has appropriated for the period commencing January 1, 2020 and ending December 31, 2020, the total sum of One Hundred and Thirty-Five Thousand and no/100 Dollars (\$135,000.00) to be administered and disbursed by DAD solely for the purposes set forth in **Exhibit "A,"** attached hereto and incorporated herein by this reference. The County's contribution of \$135,000.00 to DAD shall be made in one payment upon execution of this Agreement and shall be made pursuant to the Local Government Prompt Payment Act, Section 218.70 et. seq. Florida Statutes. By January 1, 2021, DAD will provide the County with a written status report describing the use of the County contribution under this Agreement. Additional status reports and other information related to the County's contribution will be provided by DAD as may be requested by the County.

Section 3. DAD's Obligation.

3.1 Representation of DAD. DAD represents and agrees that it shall use the funds paid under this Agreement solely for the purposes set forth in **Exhibit "A."**

3.2 No Lobbying. DAD acknowledges and agrees that no funds paid under this Agreement shall be expended for any lobbyist, as such term is defined in section 2-351 of the Orange County Code, to engage in any lobbying activities designed to influence decisions or other foreseeable action of the Board of County Commissioners or the governing body of any other municipality located within Orange County. Furthermore, DAD agrees that it shall not undertake, or cause to be undertaken, or participate in, any lobbying before the state legislature in order to advocate for or influence legislative decision making inconsistent with the legislative priorities adopted by the Board of County Commissioners, without the prior written consent of the Board of the County Commissioners. Nothing herein shall be construed to prohibit DAD from engaging in lobbying or similar activities that are not specifically prohibited by this Agreement.

3.3 DAD as an Independent Contractor. The parties expressly acknowledge that DAD is acting as an independent contractor, and nothing in this Agreement is intended or shall be construed to establish an agency, partnership or joint venture relationship between the parties.

3.4 Unlawful Discrimination. DAD, in performing its obligations under this Agreement shall not unlawfully discriminate against any worker, employee, applicant or

member of the public because of race, religion, sex, sexual orientation and gender expression/identity, color, age, disability or national origin.

3.5 No Profit. DAD cannot make a profit from outsourcing obligations under this Agreement.

3.6 Accounting. DAD will utilize such accounting procedures and practices in maintenance of records of receipts and disbursements of the funds contributed by the County as will be in accordance with generally accepted accounting principles. Such accounting system shall also include adequate records and documents to justify all prices for any and all items invoiced as well as all charges, expenses, and costs incurred in providing the goods or services.

3.7 Right to Inspect and Audit Accounts. The County, the Orange County Comptroller, or the designee of either, shall have the right to audit the receipt and expenditure of funds provided under this Agreement. DAD shall permit County staff and the Orange County Comptroller staff full access to all DAD records, documents and information, whether on paper or electronic media necessary to perform this audit. DAD shall permit the audit to occur at any time during normal working hours, provided that reasonable notice is given to DAD prior to any such inspection. Any costs incurred by DAD as a result of the County audit shall be the sole responsibility of and shall be borne by DAD. In addition, should DAD provide any and all of County's funds to sub-recipients, then, and in that event, DAD shall include in written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the County or the County's designee.

The County shall have all legal and equitable remedies available to it, including, but not limited to, injunctive relief, the right to terminate payments; payment of restitution for any funds utilized by DAD in a manner which is not in conformance with the terms of this Agreement.

3.8 Maintenance of Records. For a period ending five (5) years after the expiration or termination of this Agreement, DAD, shall make all records and documents relating to this Agreement available for inspection and copying to the County or any agent designated by the County.

3.9 Assignment. Neither party may assign its rights hereunder, without the prior written consent of the other party. Failure to comply with this section may result in immediate termination of this Agreement.

3.10 Indemnification. DAD agrees to indemnify and hold harmless the County from and against any and all liability claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including reasonable

attorney's fees, attorneys on appeal of any kind and nature arising or growing out of or in any way connected with the performance or non-performance by DAD under this Agreement.

Section 4. Term and Termination. The term of this Agreement shall begin on the last date of execution by both parties hereto and shall continue until December 31, 2020.

4.1 Funding Limitations. In the event funds to finance all or part of this Agreement do not become available, obligations of each party thereunder may be terminated upon no less than twenty-four (24) hours' notice in writing to the other party. The County shall be the sole and final authority as to the determination of the availability of funds.

4.2 Termination for Convenience. Either party may terminate this Agreement for its convenience upon no less than fifteen (15) days notice in writing to the other party. Said notice shall be delivered by certified mail or in person to the business address of the party upon whom such notice is served.

4.2 Termination for Cause. If DAD breaches any term of this Agreement, the County may:

- A. Terminate the whole or any part of the Agreement by providing the Agency with written notice of such breach and termination. Reasons for such termination by the County include, but are not in any way limited to, any of the following circumstances:
 - 1. DAD's failure to provide services called for by this Agreement within the time frame specified in this Agreement or any extension thereof; or
 - 2. DAD's failure to properly monitor and timely report its services to the County in accordance with the provisions of this Agreement.
- B. Send a written notice of breach with an opportunity to cure such breach. If DAD fails to cure the breach to the satisfaction of the County within seven (7) business days, or the time provided by the County, whichever is the greater amount, the County may terminate this Agreement in whole or in part, upon the receipt of written notice of termination by DAD. Nothing in this subpart grants DAD the right to be provided any opportunity to cure by the County.

4.3 Impact of Termination. After receipt of a notice of termination, except as otherwise directed:

- A. DAD shall:
 - 1. Remit to the County the remainder of any and all money advanced to DAD pursuant to this Agreement that has not been expended or utilized as contemplated by this Agreement as of the date upon which DAD received notice of termination.
 - 2. Stop working under this Agreement on the date of receipt and to the extent specified in the notice of termination.
 - 3. Place no further order or subcontracts to the extent that they relate to the performance of work, which was terminated.
 - 4. Handle all property as directed by the County.
 - 5. Finalize all necessary up to date reports and documents required under the terms of this Agreement up to the date of termination, up to and including the final expenditure report due at the end of the project, if any, without reimbursement beyond that due as of the date of termination for services rendered to the termination date.
 - 6. Take any other actions as directed in writing by the County.
- B. The County shall pay for all services rendered and accepted per this Agreement prior to the date which DAD received the County's notice of termination.
- C. The County may withhold final payment pending the receipt of all required documents.

4.4 Notices. Notices to either party provided for in this Agreement shall be sufficient if sent by certified or registered mail, return receipt requested, postage paid, addressed to the following addresses or to such other addresses as the parties may designate to each other in writing from time to time:

County: Orange County Board of County Commissioners
Attention: Arts and Cultural Affairs
450 East South Street, Suite 345
Orlando, Florida 32801

AND

Orange County Administrator
201 S Rosalind Avenue, 5th Floor
Orlando, Florida 32802

DAD: Downtown Arts District
39 S Magnolia Avenue
Orlando, Florida 32801

Section 5. Miscellaneous.

5.1 Use of County Logo. DAD shall recognize Orange County on its printed promotional materials in a manner to be approved by the County. This recognition shall include the Orange County Arts & Cultural Affairs logo in those materials in which other funding partners' logos are listed. Additionally, DAD shall work with the County to create separate and unique opportunities for display of the County's logo – subject to the approval of the County. The County shall be listed with all other funding partners on DAD's promotional materials. Documentation of this recognition shall be submitted to the County upon request. The County shall provide a camera-ready logo selection sheet or digital file of the appropriate logo(s).

5.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any representations or statements 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.

5.3 Waivers. Performance of this Agreement by either party, after notice of default of any terms, covenants or conditions, 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.

5.4 No Third Party Beneficiaries. This Agreement does not create, and shall not be construed as creating any rights enforceable by any person or entity other than the parties to the Agreement.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation occurring as a result of this Agreement shall be held in the Ninth Circuit Courts in and for Orange County, Florida and shall be governed by the laws of the State of Florida.

5.6 Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of

competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from litigation.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement on the dates indicated below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

DATE: 22 Oct 19

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Kimethy*
for Deputy Clerk

DOWNTOWN ARTS DISTRICT, INC.

By: *Barbara B. Hartley*
(Barbara B. Hartley)

DATE: 9.25.19

EXHIBIT "A"

SCOPE OF WORK

Agency Summary:

The mission of the Downtown Arts District (DAD) is to: lead, stimulate, and guide the development of a vibrant, innovative arts and cultural district that enhances economic development in Downtown Orlando.

FusionFest fulfills one of the four tenants of the Strategic Plan for DAD: Funding and hosting signature events that will lead to a higher profile for the Arts district. It also fulfills all of the four Key Initiatives of DAD:

- *To promote art and cultural venues and events in downtown Orlando
- *To enhance Downtown's uniqueness as a destination for local residents
- *To enhance arts education
- *To promote cultural tourism.

Services:

Pursuant to this Agreement, the County is providing \$135,000.00 in total funding to be spent by DAD in the following manner:

Spending Category	Percentage of Funding (Estimated)	Amount (Estimated)
Personnel to staff FusionFest	80%	\$108,000.00
FusionFest's Direct Program and Services	19%	\$25,650.00
Overhead/Administrative Costs	1%	\$1,350.00
Total	100 %	\$135,000.00

I. Contractors

Site management, technical management, development staff, social media, content creators, web designer, graphic designer, entertainment director, talent recruiters, vender coordinators, stage managers, volunteer coordinator, runners, EMT, puppet makers, clean-up crew and personnel as needed.

II. PROGRAMS AND SERVICES

A. Staging and Technical

Outfit three to four outdoor stages and film pavilion with stage, backdrop, lighting, sound and projection as needed as well as video screen(s).

B. Signage and Publicity

Create wayfinding and program material at the event as well as promotional materials prior to the event.

C. Program Funding

Services not covered by personnel above. Prizes and materials required for successful programming.

III. OVERHEAD/ADMINISTRATION

Provide bookkeeping, check writing and administration of FusionFest finances and programming.