

AGREEMENT #AGR2016-47
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter "Agreement") made and entered into this ____ day of _____, 2016, by and between THE CITY OF DUNNELLON (hereinafter "City") and FRIENDS OF DUNNELLON CHRISTMAS PARADE, INC. d/b/a RAINBOW SPRINGS FINE ART ASSOCIATION (hereinafter "RSFAA"), a Florida Not for Profit Corporation with a mailing address of 11928 North Williams Street, Suite 3, Dunnellon, Florida 34432.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. PROPERTY.

a) The City hereby agrees to permit RSFAA, to utilize portions of a building on property located at 20804 West Pennsylvania Avenue, Dunnellon, Florida 344231, more particularly described as:

Lots 467, 468, and 484, of Plat Book A, Page 174, of the Public Records of Marion County, Florida.

The portions of the building which RSFAA is permitted to utilize are depicted as Exhibit "A" attached hereto and made a part of this Agreement. The portion of the building depicted in Exhibit "A" shall be referred to as "the Property."

b) The Parties agree that the Property comprises a total of approximately 1350 sq.ft.

a. RSFAA shall share with the City and any building tenants access to and use of the following parts of the building or property not located in the Property: existing parking lot and restrooms.

b. The City shall have full access to the Property in order to reasonably maintain the building in accordance with the terms of this Agreement.

2. TERM. The term of this Agreement shall commence on October 10, 2016 and shall continue per the provisions of this Agreement until August 31, 2017.

3. RENT. The RSFAA will pay to City as consideration for use of the Property during the term of the Agreement, One Dollar (\$1.00) per month, for the total amount of twelve dollars (\$12.00) all of which is payable at or before the execution and delivery of this Agreement.

- 41 4. USE.
42
- 43 a) RSFAA shall use and occupy the Property solely for use as a membership based artists'
44 cooperative and classroom. RSFFA will also offer programs (i.e. art classes and lectures)
45 to the public as a service to the citizens of Dunnellon and the surrounding communities.
46 Special focus will be on offering art enrichment programs to community members
47 including children and seniors. Expenses for classes and lectures may be recovered by the
48 RSFFA. No other use shall be made of the Property without prior, written consent of City.
49
- 50 b) RSFAA will not use or permit the Property to be used for any illegal or improper purposes,
51 nor permit any disturbance, noise, or annoyance whatsoever, detrimental to the Property or
52 to the comfort of its neighbors.
53
- 54 c) RSFAA will be responsible for any code enforcement fines, liens, or judgments that may
55 become due upon the Property, for which it is determined that RFSAA is responsible, in a
56 timely manner.
57
- 58 d) RSFAA shall promptly notify City of any problems that may arise regarding the Property
59 and/or use of the Property.
60
- 61 e) Nothing herein shall be construed to create a partnership relationship with City and RSFAA
62 in any way.
63
- 64 5. UTILITIES & SERVICES. The City shall not be responsible for and will not provide any
65 utilities or services to RSFAA, the Property, or the building in which the Property is located
66 during the term of this Agreement. RSFAA shall secure and pay for any and all services
67 utilized by RSFAA during the term of this Agreement, including but not limited to:
68 telephone, cable, and internet services.
69
- 70 6. INSURANCE.
71
- 72 a) The City shall keep the building in which the Property is located insured against loss by
73 fire or casualty with extended coverage in an amount of not less than the replacement value
74 of the building.
75
- 76 b) RSFAA shall at all times and at its sole expense maintain public liability insurance policies
77 on the Property with limits of at least \$1,000,000.00 (One Million Dollars) for personal
78 injury, death and property damage, with waiver of subrogation against the City. The City
79 shall be entitled to require an increase in the coverage limits required under this
80 subparagraph by written notice to RSFAA, provided that any increase shall be reasonable
81 and consistent with prevailing market coverage limits for similarly situated properties and
82 activities. Said public liability policies shall carry both the names of the City and RSFAA

83 as named insured. RSFAA shall provide the City with a certificate evidencing the public
84 liability and insurance coverage at the time this Agreement is entered into and shall provide
85 such certificate annually thereafter or upon the renewal dates of said policies. RSFAA
86 shall keep all receipts showing payment of premiums were made on or before each
87 premium due date. All policies required to be obtained by RSFAA shall contain a
88 provision that the company writing said policy will provide the City thirty (30) days notice
89 in writing in advance of any cancellation or lapse or the effective date of any reduction in
90 the amounts of insurance. All policies shall be written as primary policies, not contributing
91 with and not in excess of any coverage which the City may carry.

92 c) RSFAA shall be solely responsible for maintaining insurance against loss by fire and
93 other casualty on its furniture, fixtures, inventory, equipment, supplies, and other
94 personal property.
95

96 d) RSFAA agrees to, and shall at all times, indemnify, defend and hold the City harmless
97 from and against any and all liability, loss, claim, suit, damage, charge or expense which
98 the City may suffer, sustain, incur, or in any way be subjected to, on account of death of or
99 injury to any person whomsoever and damage to or loss of or destruction of any property
100 whatsoever, arising from, or in any way connected with, upon, or at the Property, or the
101 occupancy or use by RSFAA of the Property or any part of the real property and/or grounds
102 upon which the Property is located, or occasioned wholly or in part by any act or omission
103 of RSFAA, its employees, customers, or other parties not under the direct supervision of
104 the City. In case the City shall be made a party to any claim or litigation for death or injury
105 to person or damage to or loss of property commenced by RSFAA or anyone else against
106 the City arising out of RSFAA's use or occupancy, then RSFAA shall defend, indemnify,
107 and hold the City harmless and shall pay all costs, expenses and reasonable attorneys' fees
108 of the City's attorneys incurred or paid by the City in connection with such claim or
109 litigation within thirty (30) days of receipt of any invoice pertaining thereto.
110 Notwithstanding the foregoing, in no event shall RSFAA be required to indemnify, defend
111 or hold the City harmless from any liability, loss, claim, suit, damage, charge or expense
112 that is proximately caused by the intentional or negligent act or omission of the City.
113

114 e) RSFAA will pay for any and all applicable workers' compensation insurance for any and
115 all employees of RSFAA as may be required by Florida Law.
116

117 f) RSFAA, its successors, sublessees, and assigns, shall be responsible, at no cost to the City,
118 for any remediation of any hazardous substances on the Property or any part of the real
119 property and/or grounds upon which the Property is located, caused by RSFAA, its agents,
120 successors, and assigns. RSFAA shall use bonded contractors to perform any remediation
121 work required by this section. Such remediation shall be completed promptly and in
122 accordance with all applicable laws. In no event shall RSFAA be responsible for
123 remediation of any hazardous substances on the Property or any part of the real property
124 and/or grounds upon which the Property is located, caused by the City, its agents,
125 successors or assigns.
126

127

- 128 7. MAINTENANCE & REPAIRS.
129
- 130 a) City will maintain the interior and exterior of the building on the Property and all other
131 improvements thereon, including but not limited to: interior ceilings, walls, floors, fixtures,
132 pipes, doors and windows in compliance with the City's Code.
133
- 134 b) City will maintain the Property's lawn (including all landscaping, trees, and shrubs),
135 parking areas, and all other exterior portions of the Property. RSFAA may make minor
136 improvements to the Property's landscaping if granted prior permission by City at City's
137 sole discretion.
138
- 139 c) RSFAA will notify City of any necessary repairs to the Property. Repairs will be performed
140 by City and are recoupable by City from RSFAA if City determines RSFAA is at fault for
141 damage necessitating the repairs.
142
- 143 8. ENTRY AND INSPECTION. City, its representatives, contractors and employees shall at
144 all times have free access to the Property for purposes necessary, incidental to or connected
145 with the performance or exercise of the City's governmental functions. In addition, at any
146 reasonable time, City may enter the Property personally or through a designated agent and
147 conduct an inspection to determine if RSFAA is complying with the provisions of this
148 Agreement. If such inspection reveals deficiencies, City may, but shall not be obligated to,
149 make such repairs or take any other action, as may be necessary to bring RSFAA into
150 compliance and recover the costs thereof from RSFAA. The parties acknowledge that
151 associated costs shall be considered additional rent due immediately from RSFAA; failure
152 by RSFAA to pay these sums shall be grounds for termination of this Agreement.
153
- 154 9. RSFAA shall not perform any alterations and/or improvements to the Property. RSFAA
155 has no power or authority to subject the City's interest in the Property to liens of any kind
156 against City's interest during this Agreement. If any third party files a lien, RSFAA, will
157 release City's interest from the legal effect of such lien. In such an event, all alterations or
158 improvements on the Property shall become the property of the City.
159
- 160 10. INDEMNITY. RSFAA hereby covenants and agrees to indemnify and hold harmless City,
161 its board members, employees, consultants, attorneys and/or agents (collectively the "City
162 Related Parties,") from and against all liability, losses or damages, including attorneys' fees
163 and costs, at both the trial and appellate levels, which City and/or the City Related Parties may
164 suffer as a result of claims, demands, suits, causes of actions or proceeding of any kind or
165 nature arising out of, relating to or resulting from the performance or non-performance of this
166 Agreement by RSFAA or its employees, agents, servants, partners, principals or
167 subcontractors. RSFAA shall pay all claims and losses and shall investigate and defend (with

168 legal counsel acceptable to City) all claims, suits or actions of any kind or nature in the name
169 of City where applicable, including appellate proceedings, and shall pay all costs, judgments,
170 and attorney's fees and costs which may issue. Nothing herein shall be construed as a waiver
171 by City of sovereign immunity or of any rights or limits to liability existing under Section
172 768.28, Florida Statutes.

173
174 11. COMPLIANCE WITH LAWS. The right is hereby reserved by City to adopt, in addition
175 to the provisions herein contained within this Agreement and existing applicable
176 ordinances, any additional regulations as it shall find necessary in the exercise or its
177 powers. RSFAA shall conduct all operations hereunder in compliance with all applicable
178 laws, and shall not permit any violations of law to remain upon said Property.

179
180 12. ASSIGNMENT. This Agreement shall not be assigned by RSFAA without the prior written
181 consent from City.

182
183 13. RENEWAL. This Agreement shall renew automatically on a month-to-month basis until
184 terminated per the terms of Section 16 or Section 17 of this Agreement.

185
186 14. NOTICE. As required for any purpose in this agreement, notice shall be addressed and
187 sent by certified U.S. Mail, return receipt requested to:

188
189 City: City Clerk, City of Dunnellon
190 20750 River Drive
191 Dunnellon, FL 34431

192
193 RSFAA: Friends of Dunnellon Christmas Parade, Inc.
194 11928 North Williams Street
195 Suite 3
196 Dunnellon, FL 34432

197
198 15. DEFAULT AND TERMINATION. The failure of RSFAA to comply with any of the terms
199 of this Agreement, or to undertake or fail to undertake any action that causes a threat to the
200 public health, safety, or welfare shall be grounds for immediate termination of this
201 agreement. In the event of a default by RSFAA under this Agreement which default
202 continues longer than ten (10) days after the giving of written notice to RSFAA by City
203 demanding that the default be cured, City may terminate this Agreement and resume
204 possession of the Property immediately, or at its option City may take such action and
205 expend such sums as may be necessary to cure the default and charge it to the RSFAA.
206 City shall also be entitled to recovery of all attorney fees and costs associated with said
207 default. In the event that RSFAA files a protest of the City's notice of default within ten

208 (10) days of receipt of said notice, the City Council shall schedule a meeting to determine
209 the reasonableness of City's declaration of default and make a decision that shall be
210 considered final and binding to the parties.

211
212 16. TERMINATION WITHOUT CAUSE. Either party may terminate this agreement without
213 cause by providing to the other ninety (90) days advance notice in writing.

214
215 17. REMEDIES CUMULATIVE. City's remedies under this Agreement are cumulative, and
216 no one remedy shall be exclusive, in law or equity, of any other rights which City may
217 have, and the exercise of one right or remedy shall not impair City's standing to exercise
218 any other right or remedy.

219
220 18. COSTS AND FEES. In the event it is necessary for City to employ counsel to enforce the
221 obligations of RSFAA hereunder, then RSFAA shall reimburse City for reasonable
222 attorney fees so incurred, whether or not suit is filed; and if a legal action is commenced
223 by either party, then at the conclusion of such action the prevailing party shall be entitled
224 to recover its reasonable costs and attorney fees, in addition to any other relief granted.

225
226 19. GOVERNING LAW. This Agreement shall be applied and construed in accordance with
227 the Laws of Florida. Venue for any action hereunder shall be in Marion County, Florida.
228 The courts of the State of Florida shall have jurisdiction to hear and decide any and all
229 disputes which arise under this Agreement.

230
231 20. MODIFICATION. This Agreement may not be amended in any manner whatsoever, other
232 than by written instrument signed by all parties hereto.

233
234 21. BINDING EFFECT. This Agreement shall be binding on, and inure to the benefit of, not
235 only City and RSFAA, but also their respective successors and assigns.

236
237 22. SEVERABILITY. If any provision hereof is declared invalid or unenforceable, it shall be
238 served from this Agreement and the remainder of the Agreement shall continue in full force
239 as if executed originally without the invalid portion.

240
241 23. ENTIRETY OF AGREEMENT. This Agreement sets forth the entire agreement of the
242 parties; it takes precedence over all prior representations, negotiations and agreements,
243 whether oral or written, which are deemed to have merged into this Agreement and have
244 been extinguished to the extent not set forth specifically herein.

245
246

247 **IN WITNESS WHEREOF**, the parties have caused their duly authorized officers to execute this
248 Agreement on the day and year first above written.

249

City:

250

CITY OF DUNNELLON, FLORIDA

251

252

NATHAN WHITT, MAYOR

253

Date signed: _____

254 **ATTEST:**

255

256 _____
DAWN M. BOWNE, MMC, CITY CLERK

257

258 Approved as to form and legal sufficiency:

259

260 _____
Andrew J. Hand, City Attorney

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262

263

264 Witnesses:

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**RSEAA: FRIENDS OF DUNNELLON
CHRISTMAS PARADE, INC.**

266

267 Print name: _____

268

MATHEW BAILLARGEON, DIRECTOR

269

Date signed: _____

270 _____
Print name: _____

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