

**NORTH CAROLINA
CITY OF HENDERSONVILLE**

**NONPROFIT FUNDING AGREEMENT
HANDS ON!- A CHILD'S GALLERY**

This Agreement made and entered into the 16 day of March by and between City of Hendersonville, North Carolina, hereinafter referred to as the "CITY", and **Hands On! – A Child's Gallery**, a North Carolina nonprofit corporation; hereinafter referred to as the "HANDS ON!".

WHEREAS, the CITY is authorized by N.C.G.S. § 160A-488 to establish and support museums, art galleries or arts centers, so long as the facility is open to the public; and

WHEREAS, HANDS ON! is a North Carolina nonprofit corporation, currently operating a children's museum and gallery in Hendersonville, NC; and

WHEREAS, HANDS ON! leases Unit 1 of Rosdon Mall Condominium, being more particularly described in that deed recorded in Deed Book 1321 at Page 354 of the Henderson County Registry, hereinafter "Unit 1," from the owner, Love in North Carolina, LLC, a North Carolina limited liability company, pursuant to a lease having a 99 year term, to expire June 30, 2117, excluding options to renew, a Memorandum of Lease being recorded in Deed Book 3220 at page 291 of the Henderson County Registry; and

WHEREAS, HANDS ON! presented the CITY with a proposal whereby HANDS ON! would dedicate a portion of Unit 1 to the development and operation of the People's Museum and Walk of Fame, A Cultural History of Henderson County, hereinafter the "PMWF," a new division of HANDS ON!, which, when finished, would promote and celebrate the diversity and the unique culture and history of all of the people of the City of Hendersonville and Henderson County with a focus on African American heritage, and would be open to the public for no admission charge, both in exchange for the CITY'S agreement to assist with funding for the PMWF; and

WHEREAS, on January 7, 2021, at its regular meeting, the CITY, through its City Council, approved certain funding for the PMWF, and authorized the City Manager to enter into an agreement with HANDS ON! consistent with the action of the City Council on January 7, 2021, to govern the terms under which the City Council would provide funding to HANDS ON! in exchange for HANDS ON!'s development and operation of the PMWF;

NOW, THEREFORE, in consideration of the following the parties hereto do mutually agree as follows:

1. The Whereas clauses are incorporated herein by reference as an integral part of this Agreement.
2. This Agreement shall be effective as of the date first written hereinabove, and shall terminate on June 30, 2026, unless soon terminated as allowed herein below.
3. HANDS ON! shall proceed in good faith and with due diligence to plan, design, develop and construct the PMWF in Unit 1 in accordance with the concept plan shown on Exhibit A, attached hereto and incorporated by reference. It is understood and agreed that the concept plan serves only as general guidance for the design and construction of the PMWF; however, the PMWF shall consist of a minimum of 800 square dedicated to the public display of exhibits and educational information concerning the diversity and the unique culture and history of all of the people of the City of Hendersonville and Henderson County with a focus on African American heritage and the

Hendersonville Walk of Fame, and shall be located in the storefront portion of Unit 1 as shown on Exhibit A.

4. HANDS ON! shall complete the design, development and construction of the PMWF no later than June 30, 2023. Once completed, HANDS ON! shall continue to operate the PMWF in good faith and with due diligence, in compliance with the terms of this Agreement for Contract Years 1 and 2 (the duration of Contract Years 1 and 2 being as specified in Paragraph 8 below), and for each of Contract Years 3, 4 and 5 for which HANDS ON! receives funding from the CITY in accordance with Paragraph 11 below.
5. Within 45 days of the execution of this Agreement, HANDS ON! shall submit to the City Manager for approval a proposed detailed design, development and construction schedule, that will demonstrate to the satisfaction of the City Manager that the PMWF can be completed by June 30, 2023.
6. Within 45 days of the execution of this Agreement, HANDS ON! shall submit a detailed project budget, including estimated costs for the design, development and construction of the PMWF, and including projected revenue sources, that together demonstrate to the satisfaction of the City Manager that adequate funding will be available to HANDS ON! to complete the design, development and construction of the PMWF by June 30, 2023.
7. Within 45 days of the execution of this Agreement, HANDS ON! shall provide to the City Manager its stated goals and objectives for the PMWF during the terms of this Agreement.
8. HANDS ON! shall plan, design, develop, construct and operate the PMWF in accordance with the terms and conditions provided in this Agreement. Provided HANDS ON! is in compliance with the terms of this Agreement, the CITY agrees to provide the following funds to HANDS ON!:

Contract Year	Funding Date	Amount	Purpose
Year 1: the effective date of this Agreement through June 30, 2022.	On or before February 28, 2021	\$78,000.00	\$39,000 to be used for the specific purpose of paying rent for Unit one and for no other purpose. \$39,000 to be used for direct costs for the design, development and construction of the PWMF within Unit 1 and for no other purpose.
Year 2: July 1, 2022-June 30, 2023	On or before July 31, 2022	\$42,000.00	For the specific purpose of paying rent for Unit 1 and for no other purpose.

9. HANDS ON! shall develop the content for the public exhibits, displays and educational component of the PMWF in consultation with community resources and community leaders including, but not limited to, members of the African American community.
10. Not later than May 31, 2022, and annually by May 31st of each year that this Agreement is in effect, HANDS ON! shall submit a written report to the City Council indicating the progress that has been

made towards the design, development and construction of the PMWF in Unit 1. The written report shall contain, at a minimum, progress made towards completing the milestones identified on the schedule submitted to the City Manager, whether the PMWF is on budget, the specific fundraising efforts that have been made to generate private donations to support the PMWF, and the amount of funds generated from private donations, grants and other funding sources, in addition to City funds, to support the PMWF.

11. Annually, the City Council will consider granting additional funding to HANDS ON! for Years 3, 4 and 5 of this Agreement on a per year basis, to be used for the specific purpose of paying the rent for Unit 1, in exchange for HANDS ON!'s continued operation of the PMWF for another fiscal year. Funding for each of Contract Years 3, 4 and 5, shown in the table below, will be approved if HANDS ON! satisfactorily demonstrates to City Council the following through its annual report, due by May 31st of each Contract Year:

- a. That the PMWF has been completed;
- b. That the PMWF is being operated and maintained by HANDS ON! in accordance with the standards for operating and maintain a museum exhibit of comparable size within a fifty (50) mile radius of the PMWF;
- c. That HANDS ON!'s stated goals and objectives are being met;
- d. That there is community support for the continued operation of the PMWF for another fiscal year as demonstrated through ongoing community fund raising, private donations, volunteer efforts and visits by the public; and
- e. That with the requested funding from the CITY, HANDS ON! will have the staffing and resources to sustain another year's operation of the PMWF in Unit 1.

Contract Year	Funding Date	Amount	Purpose
Year 3: July 1, 2023-June 30, 2024	If approved by City Council on or before June 30, 2023, to be paid on or before July 31, 2023	\$42,000.00	For the specific purpose of paying rent for Unit 1 and for no other purpose.
Year 4: July 1, 2024-June 30, 2025	If approved by City Council on or before June 30, 2024, to be paid on or before July 31, 2024	\$42,000.00	For the specific purpose of paying rent for Unit 1 and for no other purpose.
Year 5: July 1, 2025 - June 30, 2026.	If approved by City Council on or before June 30, 2025, to be paid on or before July 31, 2025	\$42,000.00	For the specific purpose of paying rent for Unit 1 and for no other purpose.

It is understood and agreed that, if approved by City Council, funding for Contract Years 3, 4 and 5 will be approved on or before the start of the Contract Year, and will be paid in advance in exchange for the continued operation of the PMWF during Contract Year. Funding for a particular Contract Year shall not be paid retroactively. As an example, if City Council did not approve funding for Contract Year 4 on or before July 1, 2024, City Council could not later approve funding for Contract Year 4 at the end of Contract Year 4 and pay it retroactively for Contract Year 4.

HANDS ON! shall have the right to request funding under the terms of this Agreement for Contract Years 3, 4 and 5, regardless of whether they receive funding for a particular prior year. As an example, if City Council did not approve funding for Contract Year 3, HANDS ON! could still request funding for Contract Year 4.

12. While this Agreement is in effect, regardless of whether funding is received for a particular Contract Year or not, HANDS ON! shall also provide the following services to the CITY:
 - a. HANDS ON! shall allow the CITY to install and maintain equipment necessary to establish a public WI-FI connection HUB.
 - b. HANDS ON! shall allow the CITY, at no additional cost, to reserve, use and host up to FIVE (5) small public events per calendar year within the confines of the exhibit galleries of HANDS ON! which includes the PMWF. The CITY shall provide written notice to HANDS ON! a minimum of fifteen days prior to any such small public event. To the extent allowed by law, the CITY shall indemnify and hold harmless HANDS ON! for any claims or damage associated with such use by the CITY.
13. If HANDS ON! violates any of the provisions of this Agreement, the CITY may terminate this Agreement (upon 30 days written notice to HANDS ON!). In such event, all unexpended funds at the time of such termination, whether held by HANDS ON! or the CITY, shall be the property of and be returned to (or remain with) the CITY. It is specifically understood and agreed by the parties hereto that a default under the terms of the Lease by HANDS ON! shall be considered a default and noncompliance with this Agreement.
14. HANDS ON! shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement without prior written consent of the CITY.
15. In connection with the performance of this Agreement, HANDS ON! shall not discriminate against any employee, applicant for employment, or program participant because of race, religion, color, sex, age, handicap, or national origin, or on account of their limited English language proficiency.
16. HANDS ON! shall maintain all accounts, books, ledgers, journals, and records in accordance with generally accepted accounting principles, practices and procedures.
17. HANDS ON! shall provide an accounting of CITY funds to the CITY to demonstrate the funds allocated to HANDS ON! have been used for the purpose(s) specified herein. The accounting report shall be submitted to the CITY by July 31st of each year that this Agreement is in effect. Further, the CITY shall be entitled to audit HANDS ON!'s expenditure of CITY funds at the CITY's discretion. Any excess funds

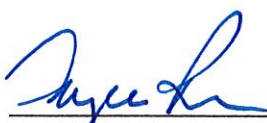
or funds not used for the expressed purpose(s) stated herein must be returned to the CITY within thirty (30) days of the CITY's request for said funds.

18. The CITY shall be entitled to conduct an evaluation at any time of HANDS ON!'s programs and activities particularly as it relates to the accomplishments of established goals and objectives of the PMWF.
19. All books and records shall be maintained by HANDS ON! for a period of at least three years from the day of the final payment under this Agreement and shall be made available for audit or evaluation upon request during regular business hours of HANDS ON!.
20. The City is in no way responsible for the administration and supervision of HANDS ON!'s Officers, Board of Directors and membership, or employees, which persons it is agreed, are not Officers, employees, or agents of the CITY.
21. As a condition of payment for services rendered under any agreement HANDS ON! has with City of Hendersonville, HANDS ON! must comply with requirements of Article 2 Chapter 64 of the North Carolina General Statutes. Further, if HANDS ON! provides services to City of Hendersonville utilizing a subcontractor, HANDS ON! shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 the General Statutes as well. HANDS ON! shall verify, by affidavit, compliance of the terms of this section upon request by City of Hendersonville.
22. HANDS ON! certifies that, as of the date of this agreement, it is not listed on the Fiscal Divestment List created by the State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58.
23. The Agreement may only amended in writing as mutually agreed upon by between the CITY and HANDS ON!.
24. Notwithstanding any provision of this Agreement, no provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the CITY within the meaning of the constitution of the State. No provision of this Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the CITY within the meaning of the constitution of the State. This Agreement shall not directly or indirectly or contingently obligate the CITY to make any payments beyond those appropriated in the sole discretion of the CITY for any Fiscal Year in which this Agreement is in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the CITY's money. To the extent of any conflict between this paragraph and any other provision of this Agreement this paragraph shall take priority.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their name by their duly authorized officers, their seals to be hereto affixed the day and year first above written.

ATTEST:

CITY OF HENDERSONVILLE


ANGELA L. REECE
CITY CLERK

3-16-2021
Dated


BY: JOHN F. CONNET
CITY MANAGER

3-16-21
Dated

HANDS ON! – A CHILD’S GALLERY,

 03-16-21
BY: AUTHORIZED SIGNATURE Dated

PRINTED NAME:
Joseph C. Knight

TITLE: Executive Director

This Agreement has been pre-audited in the manner required
By the Local Government Budget and Fiscal Control Act.


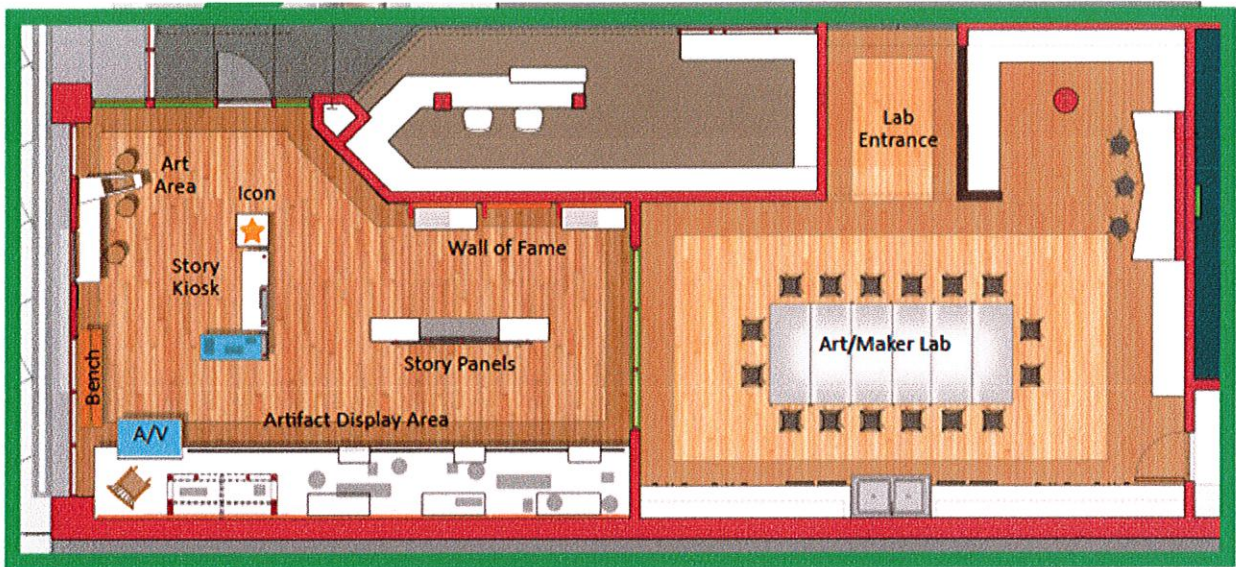
 3/16/21
JOHN BUCHANAN Dated
City Finance Director

EXHIBIT A
CONCEPT PLAN



The Peoples' Museum and Walk of Fame will consist of a minimum of 800 square feet, with the potential to expand into the Art/Maker Lab space.

