

OPERATING AGREEMENT

THIS OPERATING AGREEMENT IS entered into by and between the TOWN OF ORO VALLEY, an Arizona municipal corporation (the “Town”), and the GREATER ORO VALLEY ARTS COUNCIL D.B.A. SOUTHERN ARIZONA ARTS AND CULTURAL ALLIANCE, an Arizona non-profit corporation (“SAACA”). The Town and SAACA are sometimes collectively referred to in this OPERATING AGREEMENT as the “Parties,” or “SAACA” either of which is sometimes individually referred to as a “Party.”

RECITALS

A. The Town Council of the Town of Oro Valley has determined that artistic and cultural activities within the Town are in the public interest and enhance the community.

B. The Southern Arizona Arts and Cultural Alliance is a not-for-profit organization that exists to ensure community engagement in arts and culture. To enhance access to the arts and to promote cultural awareness, SAACA presents large-scale festivals, events and other programs. SAACA also promotes educational opportunities in art and culture.

C. The Town and SAACA desire for SAACA to present and promote artistic and cultural events and activities in the Town as described in this Operating Agreement.

AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, which are incorporated here as the intent of the Parties in entering into this Operating Agreement, and in consideration of the terms of this Operating Agreement, the Parties hereby agree as follows:

1. *Services to be performed by SAACA.*

a. General. In coordination with the Town, SAACA shall present, support, develop and implement community arts and culture projects and programs that enrich the cultural life of the community and that are consistent with the provisions of this Operating Agreement.

b. Oro Valley Concert Series. SAACA shall present concerts for the Just for Kids Concert Series, also known as Musical Magic for Kids, 2nd Thursday Concert Series and Steam Pump Ranch Concert Series, including selecting, recruiting, approving and contracting with performers for the concert series.

c. Major Town Special Events. SAACA shall assist in presenting and producing major events, such as Festival of the Arts and Classics & Oldies Car Show and Music Festival. SAACA shall select, recruit, approve and contract with vendors for booth exhibition areas at the events. The vendors may include fine arts and crafts exhibitors, live art demonstrations, food vendors, dance and music performances and other arts and cultural exhibits consistent with the theme of the special event and the terms of this Operating Agree-

ment. At any event for which SAACA secures the vendors, SAACA shall provide the Town with five complimentary booth spaces for use as the Town sees fit.

d. Marketing. SAACA shall provide all marketing and promotion for events and concerts contracted presented and produced by SAACA for the Town. All marketing and promotional materials must be approved by the Economic Development Manager prior to their distribution to the public.

2. *Effective date and duration.* This Operating Agreement shall be effective July 1, 2014 through June 30, 2015 at which time the Operating Agreement may be renegotiated.

3. *Funding.* All funding is subject to the Town's budget appropriations. For this Agreement, up to Twenty-Six Thousand and Eight Hundred Dollars (\$26,800) shall be allocated to SAACA.

4. *Relationship of the parties.* In the performance of the services contemplated by this Operating Agreement, SAACA shall act solely as an independent contractor, and nothing expressed or implied in this Operating Agreement shall be construed to create the relationship of employer and employee, partnership, principal and agent, or to create a joint venture between the Town and SAACA.

5. *501(c)(3) status of SAACA.* SAACA shall maintain its 501(c)(3) status as a non-profit corporation at all times relevant to this Operating Agreement.

6. *Insurance.* SAACA shall maintain insurance with the following required coverages and limits, and the Town shall be named as an additional insured on the commercial general liability insurance policy:

Worker's Compensation: Statutory
Employer's Liability: U.S. \$1,000,000
Commercial General Liability: U.S. \$1,000,000 per occurrence
U.S. \$2,000,000 aggregate
Business Auto Liability: U.S. \$1,000,000 combined single limit

7. *Mutual indemnification.* To the fullest extent permitted by law, each Party shall indemnify, defend and hold the other Party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, resulting from or arising out of any act or omission of the indemnifying Party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Operating Agreement.

8. *Regulatory compliance and approvals.* Each Party shall at its own expense comply with all applicable federal, state and local laws, rules, and regulations in connection with its obligations under this Operating Agreement. As part of this obligation, SAACA shall obtain any and all permits prescribed by the Town, the Operating Agreement. In consideration of the services to be performed by SAACA under the terms of this Operating Agreement, to the extent legally permissible, the Town agrees to waive all Town of Oro Valley review and permit fees that SAACA would normally be required to pay for the events and activities SAACA produces pursuant to this Operating Agreement.

9. *Appointment of representatives.* To further the commitment of the Parties to cooperate in the activities described in this Operating Agreement, the Town and SAACA each shall designate and appoint a representative to act as a liaison for the Town and its various departments and SAACA. The initial representative for the Town (the "Town Representative") shall be Amanda Jacobs, Economic Development Manager, and the initial representative for SAACA shall be Kate Marquez, Executive Director. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Operating Agreement and their responsibilities in connection with the services to be performed under this Operating Agreement.

10. *Town personnel.* At the Town's sole discretion, the Town may assign Town personnel to assist SAACA in performing the services described in paragraph 1 of this Operating Agreement. SAACA may also request assistance from Town personnel in the performance of these services by contacting the Town Representative. Assistance will be provided at the Town's sole discretion.

11. *Notices.* All notices, requests, demands, and other communications under this Operating Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Town, to: TOWN OF ORO VALLEY
Attn: Economic Development Manager
11000 N. La Canada Drive
Oro Valley, AZ 85737

Cc: TOWN OF ORO VALLEY
Attn: Town Attorney
11000 N. La Canada Drive
Oro Valley, AZ 85737

If to SAACA, to: GREATER ORO VALLEY ARTS COUNCIL D.B.A.
SOUTHERN ARIZONA ARTS AND CULTURAL ALLIANCE
Attn: Executive Director
7225 N. Oracle Road, Suite 112
Tucson, Arizona 85704

12. *Entire agreement.* This Operating Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of the Operating Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded and merged in this Operating Agreement.

13. *Authority to execute agreement.* The individuals executing this Operating Agreement hereby represent that they have full right, power, and authority to execute this Operating Agreement on behalf of their respective Parties.

14. *Force majeure.* Notwithstanding any other term, condition or provision of this Operating Agreement to the contrary, if any Party to this Operating Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war,

civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such Party, the time period provided herein for the performance by such Party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

15. *Immigration laws.* SAACA warrants that it will at all times comply with all federal immigration laws and regulations that relate to its employees and with Arizona Revised Statutes section (A.R.S. §) 23-214 (A). SAACA acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Operating Agreement subject to penalties up to and including termination of this Operating Agreement, and that the Town retains the legal right to inspect the papers of any employee who works on the Operating Agreement to ensure compliance with this warranty.

16. *Scrutinized business operations.* SAACA certifies that it does not have, nor will it for the duration of this Operating Agreement have, scrutinized business operations in Sudan or Iran as defined in A.R.S. § 35-391 and A.R.S. § 35-393, respectively.

17. *Conflict of interest.* This Operating Agreement is subject to the provisions of A.R.S. § 38-511, which provides for termination in certain instances involving conflicts of interest.

18. *Attorneys' fees.* The prevailing Party in a civil action to enforce this Operating Agreement shall be entitled to recover from the other Party, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection with that civil action.

19. *Governing law.* This Operating Agreement shall be construed in accordance with the laws of the State of Arizona.

20. *Termination.* Either Party may terminate its participation in this Operating Agreement for any reason upon at least fifteen days' prior written notice to the other Party.

21. *Miscellaneous.*

- a. This Operating Agreement may not be modified except in a writing signed by both of the Parties.
- b. The captions and section numbers appearing in this Operating Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Operating Agreement.
- c. This Operating Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have duly executed this instrument below.

The "Town"
TOWN OF ORO VALLEY, an Arizona
municipal corporation

"Greater Oro Valley Arts Council D.B.A.
Southern Arizona Arts and Cultural Alli-
ance"

GREATER ORO VALLEY ARTS COUNCIL
D.B.A. SOUTHERN ARIZONA ARTS AND
CULTURAL ALLIANCE, an Arizona non-profit
corporation

Satish I. Hiremath, Mayor

Date: _____

Kate Marquez, Executive Director

Date _____

ATTEST:

Julie Bower, Town Clerk Date

APPROVED AS TO FORM:

Tobin Sidles, Legal Services Director Date