

Town of Oro Valley

FINANCIAL PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2015, by and between the Town of Oro Valley, a municipal corporation, hereinafter called the "Town" and **Tucson Children's Museum, Inc. dba Children's Museum Oro Valley**, a non-profit corporation, hereinafter called the "Agency".

WITNESSETH

WHEREAS, it has been determined that the activities of Agency are in the public interest, and are such as to improve and promote the public welfare of the Town; and

WHEREAS, the Mayor and Council have determined that to financially participate in the promotion of the activities of Agency is a public purpose in that the activities confer direct benefit of a general character to a significant part of the public.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto do mutually agree as follows:

Section 1: Statement of Purpose

To partner with the Town of Oro Valley to create a children's museum that caters to families with young children; to establish an amenity for residents of Oro Valley and adjacent communities that promotes and focuses on Early Childhood Education; and to assist the Town of Oro Valley in maintaining their designation as a Playful City Community and Best Place to Raise Kids in Arizona.

Section 2: Benefits to the Town

- Increase in Town Tourism;
- Town ownership of all exhibits which sunsets at the end of the useful life of the exhibits;
- Access to the museum after hours to any department within the Town of Oro Valley for community outreach;
- Museum sponsorship of concert series for children

Section 3: Services to be Provided by the Town

All funding is subject to the Town's budget appropriations. For this Agreement, the Town will provide payment as follows:

- \$200,000 as a one-time payment subsequent to execution of this Financial Participation Agreement ("FPA");
- \$37,500 will be paid on May 1, 2015, as specified in Section 12
- \$75,000 per year for each subsequent year that this agreement remains valid. This amount will be broken into monthly payments as specified in Section 12.

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Section 4: Responsibility for Open Records

Agency agrees to open to the public all records relating to any funds directly received from the Town that Agency distributes to any organization and/or individual.

Section 5: Accountability

Agency shall maintain a true and accurate accounting system which meets generally accepted accounting principles, and which is capable of properly accounting for all expenditures and receipts of Agency on a timely basis. In addition, Agency shall maintain evidence of its compliance with the nondiscrimination provisions of this Agreement.

Agency's accounting system shall permit separate, identifiable accounting for all funds provided by the Town pursuant to this Agreement.

Agency shall provide the Finance Department of the Town, within four (4) months after the close of Agency's fiscal year, a copy of the financial audit of Agency's operations by an independent certified public accountant, along with any management letter and, if applicable, Agency's plan for corrective action.

If Agency does not have an audit, it shall submit within three (3) months after the close of its fiscal year, a complete accounting of Town funds received. This accounting must be approved by the Finance Department of the Town as sufficiently descriptive and complete.

If for good reason Agency cannot meet the times established for submission of financial reporting, Agency shall notify the Finance Department in writing the reason for the delay, provide an expected completion date and request a waiver of the due date.

At any time during or after the period of this Agreement, the Town Finance Department and/or a Town agent may audit Agency's overall financial operation or compliance with the nondiscrimination clause of this Agreement for the Agreement period. Agency shall provide any financial reports, nondiscrimination policies and procedures or other documentation necessary to accomplish such audits.

Section 6: Matching Grants

Agency agrees to obtain Mayor and Council approval prior to applying for any matching grants involving the commitment of Town funds.

Section 7: Nondiscrimination

Agency, in its employment policies and practices, in its public accommodations and in its provision of services shall obey all relevant and applicable, federal, state, and local laws, regulations and standards relating to discriminations, biases, and/or limitations, including, but

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not limited to, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Arizona Civil Rights Act, the Arizonans with Disabilities Act, the Human Relations provisions of the Oro Valley Code, and the Mayor and Council policy adopted on September 25, 2000, prohibiting the direct or indirect grant of discretionary Town funds to organizations that have a policy of exclusionary discrimination on the basis of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status. See Administrative Guidance Re: Non-Discrimination Policy for Programs Funded by the Town of Oro Valley, attached and incorporated herein by this reference.

Section 8: Sub-recipient Funding Agreements

Agency agrees to include in all of its sub-recipient funding agreements the nondiscrimination provisions contained in Section 8 herein.

Section 9: Term of Agreement

This Agreement shall be effective from April 1, 2015, through December 31, 2019. This Agreement may be extended at the sole option of the Town for additional fiscal year(s) only under the following conditions:

- A. The Mayor and Council of the Town determine the services of Agency are in the public interest and allocate funds therefore; and
- B. The parties mutually agree to a scope of services to be provided by Agency in any subsequent fiscal year.

Any extension of this Agreement shall be memorialized in writing and signed by the Parties.

Section 10: Payment Withholding, Reduction, or Termination

The Town may withhold whole or part of the scheduled payment, reduce, or terminate funding allocations to Agency if:

- A. Services are not rendered.
- B. Agency fails to supply information or reports as required.
- C. Agency is not in compliance with agreed upon disbursement documentation and/or other project performance.
- D. Agency fails to make required payments to subcontractors.
- E. The Town has reasonable cause to believe Agency is not in compliance with the nondiscrimination clause of this Agreement.
- F. The Mayor and Council fail to appropriate all or part of the funds for this Agreement.

Such payment reductions or payment termination may result in Agency receiving a lesser total Town allocation under this Agreement than the maximum funding allocated. If reasons for

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withholding payments other non-appropriation of funds have been corrected to the satisfaction of the Town, any amounts due shall be processed.

The Town will be reimbursed for any funds expended for services not rendered. In addition, Agency shall return to the Town any Town funds provided pursuant to this Agreement that have not been expended by December 31, 2019.

Section 11: Termination of Agreement

This Agreement may be terminated at any time by mutual written consent, or by either party giving thirty (30) days written notice to the other party or at such time, as in the opinion of the Town, Agency's performance hereunder is deemed unsatisfactory.

Section 12: Method of Payment

The parties have agreed that Agency will receive up to \$575,000. Disbursement of funds by the Town is subject to the annual appropriation by the Town Council and the limitations of the state budget law. Agency will receive a one-time payment for exhibits of \$200,000. Additionally, Agency will receive a payment of \$37,500 on May 1, 2015. An annual \$75,000 will then be distributed monthly beginning July 1, 2015, for a monthly payment of \$6,250.

Section 13: Indemnification

Agency agrees to indemnify, defend and save harmless the Town, its Mayor and Council, appointed boards, committees, and commissions, officers, employees, and insurance carriers, individually and collectively, from all losses, claims, suits, demands, expenses, subrogations, attorney's fees, or actions of any kind and nature resulting from personal injury to any person, including employees of Agency or of any subcontractor employed by Agency (including bodily injury and death); claims based upon discrimination and/or violation of civil rights; or damages to any property, arising or alleged to have arisen out of the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the Town, its officers, agents, or employees. Workers' Compensation insurance and/or self-insurance carried by the Town do not apply to employees or volunteers acting in any capacity for Agency.

Section 14: Independent Contractor

The parties stipulate and agree that Agency is not an employee of the Town and is performing its duties hereunder as an Independent Contractor, supplying its own employees and maintaining its own insurance, workers' compensation insurance and handling all of its own internal accounting. The Town in no way controls, directs or has any responsibility for the actions of Agency.

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Section 15: Insurance

Agency agrees to:

- A. Obtain insurance coverage of the types and amounts required in this Section and keep such insurance coverage in force throughout the life of this Agreement. All policies will contain an endorsement providing that written notice be given to the Town at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Comprehensive General Liability Insurance policy will include the Town as an additional insured with respect to liability arising out of the performance of this Agreement.
- C. Agency will provide and maintain minimum insurance limits as follows:

| COVERAGE AFFORDED | LIMITS OF LIABILITY |
|---|---|
| 1. Workers' Compensation | Statute |
| 2. Employer's Liability | \$100,000 |
| 3. Comprehensive General Liability Insurance -- Including: (1) Products and Completed Operations (2) Blanket Contractual | \$1,000,000 - Bodily Injury and Combined Single Limit \$100,000 Property Damage |

- D. Agency shall adequately insure itself against claims based upon unlawful discrimination and violation of civil rights. The cost of this insurance shall be borne by Agency.

Section 16. Use of the Town Logo

The Town Logo shall be used for the recognition of the Town's contribution to Agency only.

Section 17: Conflict of Interest

This Agreement is subject to the conflict of interest provisions of A.R.S. § 38-511, *et seq.*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

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TOWN OF ORO VALLEY, a municipal corporation

Dr. Satish I. Hiremath, as Mayor
and not personally

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, as Town Clerk
and not personally

Tobin Sidles, as Legal Services Director
and not personally

Date: _____

Date: _____

Tucson Children’s Museum, Inc.
dba Children’s Museum Oro Valley
a non-profit Corporation

Agency Representative
and not personally

Title _____

State of Arizona)
) ss.
County of)

On this ___ day of _____, 2015, _____, known to me to be the person whose name is subscribed to the within instrument, personally appeared before me and acknowledged that he/she executed the same for the purposes contained.

Given under my hand and seal on _____, 2015.

Notary

My Commission Expires: _____