

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered in duplicate as of November 12, 2019 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on October 8, 2019, by and between the PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, a California nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH, with a place of business at 350 Elm Avenue, Long Beach, California 90802 ("PCA"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, since 1985, PCA and City have had a contractual relationship pursuant to which City allocated and distributed certain funds to support a broad range of arts and cultural activities in City and under which PCA acted as administrator and organizer for various arts and cultural activities and responsibilities; and

WHEREAS, it is the desire and intent of PCA and City to continue their relationship for another year;

NOW, THEREFORE, the parties hereto agree as follows:

- 1. The above recitals are incorporated herein.
- 2.

A. In accordance with the allocation authorized by the City Council pursuant to the recommendation of the PCA, City shall pay to PCA an amount not to exceed of Five Hundred Four Thousand Three Hundred Dollars (\$504,300) during the City's fiscal year 2019-2020 to provide financial support in the amounts shown on Exhibit "A", attached hereto and incorporated herein by this reference: (1) to offset PCA operating budget costs including administration, staff coordination, and fundraising activities, in the amount of Two Hundred Thirty-Nine Thousand Three Hundred Dollars (\$239,300); and (2) to fund a community arts grant program in the amount of One Hundred Ninety Thousand Dollars (\$190,000), as shown on Exhibit "B" attached hereto.

1 Included in the above, the City of Long Beach shall provide to PCA a
2 one-time Challenge Grant in an amount up to Seventy-Five Thousand Dollars
3 (\$75,000) intended to provide an incentive for private contributions to the Arts
4 Council whereby the City shall match all the donations on a one-to-one basis for
5 contributions received October 1, 2019 to September 30, 2020 from non-
6 governmental sources to support initiatives for artist sustainability and professional
7 development, efforts for arts equity in underserved communities, and strategies
8 that increase marketing of the arts and cultural community of Long Beach, as
9 described on Exhibit "A-1" attached hereto and incorporated herein.

10 City shall pay Four Hundred Twenty-Nine Thousand Three Hundred
11 Dollars (\$429,300) to PCA in installments as follows: One Hundred Sixty
12 Thousand Dollars (\$160,000.00) on City's execution of this Agreement and the
13 remaining amount of Two Hundred Sixty-Nine Thousand Three Hundred Dollars
14 (\$269,300.00) in installments of Thirty-Three Thousand Six Hundred Sixty-Two
15 Dollars and Fifty Cents (\$33,662.50) on the second calendar day of each month
16 beginning January 2020 through August 2020.

17 B. The organizations and artists shown on Exhibit "B" as
18 receiving "Professional Artist Fellowships", "Operating Grants, Level I", "Operating
19 Grants, Level II", and "Community Projects Grants" must apply for support and
20 successfully meet PCA's established criteria for support. In order to fulfill its
21 obligations as reviewing agency for all City funds allocated to the arts and cultural
22 groups and artists in Exhibit "B", PCA shall enter an agreement with each arts and
23 cultural group and artist, which agreement shall set forth the terms under which
24 the groups and artists will report to PCA regarding their financial status, Long
25 Beach residency status, community outreach efforts and any other information
26 required by PCA to be in compliance with this Agreement. PCA shall submit
27 copies of all executed agreements between PCA and each group and artist to the
28 City Manager within fifteen (15) days after full execution.

1 3. In accordance with the City's Administrative Regulation No. AR9-1
2 Regulation Governing Percent for the Arts Program ("Policy"), PCA shall administer and
3 oversee the Percent for the Arts Program, as described in Exhibit "C", attached hereto
4 and incorporated herein. The City will disburse Percent for the Arts Program funding,
5 separate and in addition to the annual Agreement, each year to the PCA based on
6 calculations of actual Program fees collected from eligible sources from the prior Fiscal
7 Year, pursuant to the Percent for the Arts Policy as described in Exhibit C".

8 4. Before any payment is made on invoices from each arts and cultural
9 group and artist shown on Exhibit "B", PCA shall assure that the funds requested will be
10 used appropriately to promote cultural and arts activities in Long Beach to the benefit of
11 the Long Beach citizenry and shall so certify in the performance report required in
12 Section 4 below.

13 5. On or before January 2, 2020, April 2, 2020, July 2, 2020 and
14 October 1, 2020, PCA shall submit to City a performance report of its activities, which
15 report shall include a statement of all arts and cultural groups and artists to whom funds
16 were distributed during the preceding three-month period and certification that each such
17 group or artist met the provisions of this Agreement. PCA shall require that the arts and
18 cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit an
19 interim and final report statement to PCA, setting forth the group's financial condition and
20 disclosure of all expenses, revenues, and fund balances relating to funds given to said
21 groups hereunder. These statements shall be prepared and submitted on a schedule
22 that will permit them to be reviewed by the City upon request.

23 6.
24 A. PCA shall prepare and file with City a complete annual
25 financial report no later than November 15, 2020, covering the period October 1,
26 2019 through September 30, 2020 and accounting for the Five Hundred Four
27 Thousand Three Hundred Dollars (\$504,300) allocated to PCA under Section 2
28 hereof. At that time, PCA shall return to City any revenues undistributed or

1 unexpended by it on or prior to September 30, 2020. Said financial report shall be
2 certified by PCA's senior executive officer to indicate that all expenditures are
3 supported by receipts, invoices, vouchers or other appropriate documentation and
4 that such expenditures were made in accordance with this Agreement. PCA shall
5 maintain books, financial records and files as necessary to support its certified
6 financial statements. The City Auditor and other appropriate City personnel shall
7 have the right to examine and audit the statements and supporting books, records
8 and files for three years following the expiration or sooner termination of this
9 Agreement.

10 B. Notwithstanding anything to the contrary herein, the City
11 Manager may approve the retention by PCA of funds allocated to specific arts and
12 cultural groups and artists during 2019-2020 and not spent by September 30,
13 2020, so long as he finds that adequate progress and timely completion of the
14 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly
15 status reports on such projects and shall expedite completion in a form satisfactory
16 to the City Manager.

17 C. On or before November 15, 2020, PCA shall secure from
18 each arts and cultural group identified in Exhibit "B" a comprehensive annual
19 financial statement for the period October 1, 2019 through September 30, 2020.
20 Said financial statement shall be reviewed, audited and approved by each group's
21 board, and shall be forwarded to the City Manager, together with a copy of the
22 applicable report based on said review, or part of the annual financial statement.

23 7. PCA shall maintain a current commercial checking account at a
24 commercial bank in which all funds granted under this Agreement are immediately
25 deposited when received and from which all payments are made for PCA's expenses for
26 programs and for services. The balance in this bank account and such reconciliation
27 shall be certified by the senior executive officer of PCA.

28 8. PCA shall not use any of its funds for political campaign contributions

1 or for promotions of political candidates or any other political purpose.

2 9. PCA shall, upon request by City, submit to City a list of the names,
3 addresses and assignments of all its officers and staff, permanent, part-time and
4 voluntary. PCA shall notify City of any changes to this list within ten (10) days after said
5 changes become effective.

6 10. PCA shall maintain for a period of three (3) years and make available
7 to City such additional records, budgetary and other information as City may request.

8 11. City, its officials and employees shall not have any control over the
9 conduct of PCA's activities or the employees of PCA. PCA expressly warrants that it will
10 not at any time or in any manner represent that PCA or any of PCA's agents, volunteers,
11 subscribers, members, officers or employees are in any manner the agents, volunteers,
12 subscribers, officers or employees of City.

13 12. PCA shall with respect to this Agreement indemnify and hold
14 harmless City, its officials, employees and agents (collectively in this Section "City") from
15 and against any and all liability, claims, demands, damage, loss, causes of action,
16 proceedings, penalties, costs and expenses (including reasonable attorney's fees, court
17 costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims
18 include by way of example but are not limited to: Claims for property damage, personal
19 injury or death arising in whole or in part from any negligent act or omission of PCA, its
20 officers, employees, agents, or anyone under PCA's control (collectively "Indemnitor");
21 PCA's breach of this Agreement; misrepresentation; willful misconduct; and Claims by
22 any employee of Indemnitor relating in any way to worker's compensation. Independent
23 of the duty to indemnify and as a free-standing duty on the part of PCA, PCA shall defend
24 the City and shall continue such defense until the Claim (including allegations in a Claim)
25 is resolved, whether by settlement, judgment or otherwise. No finding or judgment of
26 negligence, fault, breach, or the like on the part of Indemnitor shall be required for the
27 duty to defend to arise. PCA shall notify the City of any Claim within ten (10) days.
28 Likewise, the City shall notify PCA of any Claim, shall tender the defense of such Claim

1 to PCA, and shall assist PCA, as may be reasonably requested, in such defense.

2 13. As a condition precedent to the effectiveness of this Agreement,
3 PCA shall procure and maintain at PCA's expense for the duration of this Agreement
4 from insurance companies that are admitted to write insurance in California or from
5 authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII
6 by A.M. Best Company:

7 (a) Commercial general liability insurance (equivalent in scope to ISO
8 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million
9 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general
10 aggregate. Such coverage shall include but not be limited to broad form
11 contractual liability, cross liability, independent contractors liability, and products
12 and completed operations liability. The City, its officials, employees and agents
13 shall be named as additional insureds by endorsement (on City's endorsement
14 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG
15 20 26 11 85), and this insurance shall contain no special limitations on the scope
16 of protection given to the City, its officials, employees and agents.

17 (b) Workers' Compensation insurance as required by the Labor Code of
18 the State of California and employer's liability insurance in an amount not less than
19 One Million Dollars (\$1,000,000).

20 (c) Professional or errors and omissions liability insurance in an amount
21 not less than One Million Dollars (\$1,000,000) per claim.

22 (d) Commercial automobile liability insurance (equivalent in scope to
23 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not
24 less than Five Hundred Thousand Dollars (\$500,000) combined single limit per
25 accident.

26 Any self-insurance program, self-insured retention, or deductible must be
27 separately approved in writing by City's Risk Manager or designee and shall protect City,
28 its officials, employees and agents in the same manner and to the same extent as they

1 would have been protected had the policy or policies not contained retention or
2 deductible provisions. Each insurance policy shall be endorsed to state that coverage
3 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
4 notice to City, and shall be primary and not contributing to any other insurance or self-
5 insurance maintained by City. PCA shall notify the City in writing within five (5) days after
6 any insurance required herein has been voided by the insurer or cancelled by the
7 insured.

8 PCA shall require that all contractors and subcontractors which PCA uses
9 in the performance of services hereunder maintain insurance in compliance with this
10 Section unless otherwise agreed in writing by City's Risk Manager or designee.

11 Prior to the start of performance, PCA shall deliver to City certificates of
12 insurance and required endorsements for approval as to sufficiency and form. The
13 certificate and endorsements for each insurance policy shall contain the original signature
14 of a person authorized by that insurer to bind coverage on its behalf. In addition, PCA,
15 shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to
16 City certificates of insurance and endorsements evidencing renewal of such insurance.
17 City reserves the right to require complete certified copies of all policies of PCA and
18 PCA's contractors and subcontractors, at any time. PCA shall make available to City's
19 Risk Manager or designee all books, records and other information relating to the
20 insurance coverage required herein, during normal business hours.

21 Any modification or waiver of the insurance requirements herein shall only
22 be made with the approval of City's Risk Manager or designee. Not more frequently than
23 once a year, the City's Risk Manager or designee may require that PCA, PCA's
24 contractors and subcontractors change the amount, scope or types of coverages required
25 herein if, in his or her sole opinion, the amount, scope, or types of coverages herein are
26 not adequate.

27 The procuring or existence of insurance shall not be construed or deemed
28 as a limitation on liability relating to PCA's performance or as full performance of or

1 compliance with the indemnification provisions of this Agreement.

2 14. This Agreement contemplates the unique role and responsibilities of
3 PCA and the parties acknowledge that a substantial inducement to City for entering this
4 Agreement was and is that uniqueness. As a result, PCA shall not assign its rights or
5 delegate its duties hereunder, or any interest herein, or any portion hereof, without the
6 prior written consent of City. Any attempted assignment or delegation shall be void, and
7 any assignee or delegate shall acquire no right or interest by reason of such attempted
8 assignment or delegation. PCA shall not subcontract any portion of the performance
9 required hereunder. Nothing in this Section 13 shall prevent PCA from employing as
10 many employees as PCA deems necessary for performance of this Agreement.

11 15. Any notice required hereunder or desired to be given by either party
12 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
13 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California
14 90802 Attn: City Manager and to PCA at the address first shown herein. Change of
15 address shall be given in the same manner as stated herein. Notice shall be deemed
16 given on the date deposited in the mail or on the date personal delivery is made,
17 whichever first occurs.

18 16. The term of this Agreement shall begin at 12:01 a.m. on October 1,
19 2019, and shall terminate at midnight on September 30, 2020. Either party may
20 terminate this Agreement by giving thirty (30) days prior notice to the other party. The
21 complete annual financial report required by Section 5 shall be filed no later than
22 November 15, 2020, and any revenues to be returned shall be returned at the time of
23 said filing, unless otherwise allocated, with the approval of the City Manager.

24 17. The City Manager or designee shall administer this Agreement and
25 all matters in connection herewith, and his decision shall be final.

26 18. The acceptance of performance or the payment of any money by
27 City shall not operate as a waiver of any provision of this Agreement, or of any right to
28 damages or indemnity stated in this Agreement. The waiver of any breach of this

1 Agreement shall not constitute a waiver of any other or subsequent breach of this
2 Agreement.

3 19. PCA, by executing this Agreement, certifies that, at the time PCA
4 executes this Agreement and during the term hereof, PCA does not and will not perform
5 hereunder in any manner which would create a conflict, whether monetary or otherwise,
6 as between the interests of City and the interests of any recipient of funds hereunder.

7 20. This Agreement shall not be amended, nor any provision or breach
8 hereof waived, except in writing signed by the parties which expressly refers to this
9 Agreement.

10 21. This Agreement shall be governed by and construed pursuant to the
11 laws of the State of California.

12 22. This Agreement constitutes the entire understanding between the
13 parties and supersedes all other agreements, whether oral or written, with respect to the
14 subject matter herein.

15 23. In the event that there is any legal proceeding between the parties to
16 enforce or interpret this Agreement or to protect or establish any rights or remedies
17 hereunder, the prevailing party shall be entitled to its costs and expenses, including
18 reasonable attorney's fees.

19 24. Subject to applicable laws, rules and regulations, PCA shall not
20 discriminate in the performance of this Agreement on the basis of race, religion, national
21 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
22 disability.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement with all formalities required by law as of the date first stated above.

PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, a California nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH

Dec. 05, 2019

By [Signature]
Name: Griselda Suarez
Title: Executive Director

Dec. 05 2019

By [Signature]
Name: Brian Trimble
Title: Board President

"PCA"

CITY OF LONG BEACH, a municipal corporation

Dec. 11 2019

By Rebecca G. Garner

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

"City"

This Agreement is approved as to form on 12-10 2019.

CHARLES PARKIN, City Attorney

By [Signature] Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

Exhibit A-1

City of Long Beach
Challenge grant for
Arts Council for Long Beach
Fiscal Year 2019-2020

The City of Long Beach is providing a one-time Challenge Grant up to \$75,000 to the Arts Council for Long Beach (Arts Council). The Challenge Grant is intended to provide an incentive for private contributions to the Arts Council by the City matching the donations on a one-to-one basis for contributions received October 1, 2019 to September 30, 2020 from private and public sources that support administration, coordination, and implementation of programs for artist sustainability and professional development, efforts for arts equity in underserved communities, arts education, public art projects and strategies that increase arts marketing projects.

Challenge Grant Provisions:

1. Donations should be received from individual donors, foundations, corporations, and non-municipal funds to support artist sustainability and professional development, efforts for arts equity in underserved communities, and strategies that increase arts marketing projects. The City will match on a one-to-one basis. The City will match up to \$75,000 of the amount of said donations received during the fiscal year.
2. The Arts Council must submit evidence (suitable to the City) of donations made to support initiatives for artist sustainability and professional development, efforts for arts equity in underserved communities, and strategies that increase arts marketing projects for Long Beach during the fiscal year beginning October 1, 2019 and ending on September 30, 2020. All evidence must be submitted to the City Manager's Office no later than October 1, 2020. The Arts Council can submit evidence to the City at the same time its installment invoice is given to the City for the payment of the other allocated funding under the contract (\$429,300). The City may request reasonable reports or information to ensure grant compliance.
3. Any grants funds not utilized for the intended purpose by September 30, 2021 (one year after the grant match period) must be returned to the City or the City must authorize an extension.
4. The receipt or appropriation of Challenge Grant funds should not be used in any way to determine compensation or bonuses.

**2019-2020 Grant Awards
Exhibit B**

	1st payment 1/15/20	2nd payment 5/15/20	3rd payment 11/15/20	Total Award
ARTIST FELLOWSHIP	100%	0%	0%	
Kelsey Zwarka	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
Martin Etem	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
Jason Keam	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
Ali Smith	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
	\$12,000.00			\$ 12,000.00

OPERATING GRANTS, LEVEL I (\$250K-\$1M budge	33%	33%	34%	
Art Theatre	808.32	808.32	832.81	2,449.44
Camerata Singers of Long Beach	815.73	815.73	840.45	\$ 2,471.91
Long Beach Playhouse	871.35	871.35	897.75	\$ 2,640.45
Musica Angelica	804.61	804.61	828.99	\$ 2,438.20
	3,300.00	3,300.00	3,400.00	\$ 10,000.00

OPERATING GRANTS, LEVEL II (budgets >\$1M)	33%	33%	34%	
Arts & Services for Disabled, Inc.	6,481.50	6,481.50	6,677.91	\$ 19,640.90
International City Theatre	5,609.01	5,609.01	5,778.98	\$ 16,997.00
Long Beach Opera	6,244.10	6,244.10	6,433.31	\$ 18,921.50
Long Beach Symphony Orchestra	5,864.23	5,864.23	6,041.94	\$ 17,770.40
Museum of Latin American Art	6,030.42	6,030.42	6,213.16	\$ 18,274.00
Musical Theatre West	5,080.75	5,080.75	5,234.71	\$ 15,396.20
	35,310.00	35,310.00	36,380.00	\$ 107,000.00

COMMUNITY PROJECT GRANTS	50%		50%	
Kleefeld Contemporary	2,500.00	XXXXXX	2,500.00	\$ 5,000
Carpenter Performing Arts Center	2,500.00	XXXXXX	2,500.00	\$ 5,000
Cambodia Town Inc.	2,000.00	XXXXXX	2,000.00	\$ 4,000
LGBTQ Center of Long Beach	1,750.00	XXXXXX	1,750.00	\$ 3,500
South Coast Dance Arts Alliance	1,750.00	XXXXXX	1,750.00	\$ 3,500
Hmong Association of Long Beach	1,750.00	XXXXXX	1,750.00	\$ 3,500
South Coast Chorale	1,750.00	XXXXXX	1,750.00	\$ 3,500
Long Beach Blues Society	1,500.00	XXXXXX	1,500.00	\$ 3,000
Rock Club-Music is the Remedy	1,000.00	XXXXXX	1,000.00	\$ 2,000
Act Out Theater	1,000.00	XXXXXX	1,000.00	\$ 2,000
	17,500.00		17,500.00	\$ 35,000.00

SUB TOTAL GRANT AWARDS FOR 2019-2020	\$68,110.00	\$38,610.00	\$57,280.00	\$ 164,000.00
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Monthly Microgrant Awards	\$ 26,000.00
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TOTAL GRANT AWARDS FOR 2019-2020	\$ 190,000.00
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Exhibit C

PERCENT FOR THE ARTS

1. Under the City of Long Beach's Percent for the Arts Program (Program), regulated by the City's Administrative Regulation No. AR9-1 Regulation Governing Percent for the Arts Program (Policy), PCA will assume the role of the primary vendor contracted by the City to administer and manage all Program projects. Accordingly, the City and PCA will enter into separate memorandums of understanding (MOU) to define individual project scope of works, timelines, and deliverables and disburse funding on a separate funding schedule separate from this annual Agreement.
2. Program Funding Allocations, Project Identification, and Review, Selection and Approvals of Program commissioned works are in accordance with the City's Percent for the Arts Policy.
3. Acknowledgements: *"Supported in part by the City of Long Beach and Percent for the Arts"* must appear or be stated on all advertisements, programs, publications, displays, web site, social media, in announcements and every other form of public communication for events and projects receiving funding support from the Percent for the Arts Program.
4. Equity: In addition, and pursuant to the City's Percent for the Arts Policy, the PCA will make every effort to equitably solicit public art opportunities to members of all backgrounds, ethnicities, religions, orientation and gender identification. To the extent possible, PCA will also engage new artists to participate in the public art application process. It is the goal of the City to develop high caliber art projects that meet the diverse interests of the residents of Long Beach. The following factors should be taken into account by PCA when reviewing and selecting proposals for new works:
 - i. Public art proposals will reflect input gathered from local community and neighborhood stakeholders through open forums to provide the artist inspiration and potential concepts and themes. Public art shall be compatible with the host community, and public input shall be received and considered as part of the design process.
 - ii. Gathering public input and appropriately transmitting the input to the artist will be the responsibility of the PCA.
 - iii. Throughout process of creating this Policy, City staff and PCA worked closely to ensure PCA will make every effort to equitably solicit public art opportunities to members of all backgrounds, ethnicities, religions, orientation, and gender identification.
 - iv. To the extent possible, PCA will also engage new artists to participate in the public art application process.
5. Roles and Responsibilities are defined in the City's Percent for the Arts Policy.

Exhibit C

PERCENT FOR THE ARTS

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 - iv. To the extent possible, PCA will also engage new artists to participate in the public art application process.
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