

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

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3 THIS AGREEMENT is made and entered in duplicate as of November 17,
4 2014 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting held on October 21, 2014, by and between the
6 PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, a California
7 nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH, with a
8 place of business at 350 Elm Avenue, Long Beach, California 90802 ("PCA"), and the
9 CITY OF LONG BEACH, a municipal corporation ("City").

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

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

16 NOW, THEREFORE, the parties hereto agree as follows:

- 17 1. The above recitals are incorporated herein.
18 2.

19 A. In accordance with the allocation authorized by the City
20 Council pursuant to the recommendation of the PCA, City shall pay to PCA a sum
21 of Three Hundred Fifty-Four Thousand Three Hundred Dollars (\$354,300) during
22 the City's fiscal year 2014-2015 to provide financial support in the amounts shown
23 on Exhibit "A", attached hereto and incorporated herein by this reference: (1) to
24 offset PCA operating budget costs including administration, staff coordination, and
25 fundraising activities, in the amount of One Hundred Sixty-Four Thousand Three
26 Hundred Dollars (\$164,300); and (2) for grants in the amount of One Hundred
27 Ninety Thousand Dollars (\$190,000), as shown on Exhibit "B" attached hereto.

28 In addition to the above, the City of Long Beach shall provide to PCA a one-

1 time Challenge Grant in an amount up to Fifty Thousand Dollars (\$50,000). The
2 Challenge Grant is intended to provide an incentive for private contributions to the
3 Arts Council whereby the City shall match all the donations on a one-to-one basis
4 for contributions received October 1, 2014 to September 30, 2015 from non-
5 governmental sources for the marketing of the arts and cultural community of Long
6 Beach, as described on Exhibit "A-1" attached hereto and incorporated herein.

7 The organizations and artists shown on Exhibit "B" as receiving
8 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,
9 Level II", and "Community Projects Grants" must apply for support and
10 successfully meet PCA's established criteria for support. City shall pay Three
11 Hundred Fifty-Four Thousand Three Hundred Dollars (\$354,300) to PCA in
12 installments as follows: One Hundred Sixty Thousand Dollars (\$160,000) on City's
13 execution of this Agreement and the remaining amount of One Hundred Ninety-
14 Four Thousand Three Hundred Dollars (\$194,300) in installments of Twenty-Four
15 Thousand Two Hundred Eighty-Seven Dollars and Fifty Cents (\$24,287.50) on the
16 second calendar day of each month beginning January 2015 through August
17 2015.

18 B. In order to fulfill its obligations as reviewing agency for all City
19 funds allocated to the arts and cultural groups and artists in Exhibit "B", PCA shall
20 enter an agreement with each arts and cultural group and artist, which agreement
21 shall set forth the terms under which the groups and artists will report to PCA
22 regarding their financial status, Long Beach residency status, community outreach
23 efforts and any other information required by PCA to be in compliance with this
24 Agreement. PCA shall submit copies of all executed agreements between PCA
25 and each group and artist to the City Manager within fifteen (15) days after full
26 execution.

27 3. Before any payment is made on invoices from each arts and cultural
28 group and artist shown on Exhibit "B", PCA shall assure that the funds requested will be

1 used appropriately to promote cultural and arts activities in Long Beach to the benefit of
2 the Long Beach citizenry and shall so certify in the performance report required in
3 Section 4 below.

4 4. On or before January 2, 2015, April 2, 2015, July 2, 2015 and
5 October 1, 2015, PCA shall submit to City a performance report of its activities, which
6 report shall include a statement of all arts and cultural groups and artists to whom funds
7 were distributed during the preceding three-month period and certification that each such
8 group or artist met the provisions of this Agreement. PCA shall require that the arts and
9 cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit
10 an interim and final report statement to PCA, setting forth the group's financial condition
11 and disclosure of all expenses, revenues, and fund balances relating to funds given to
12 said groups hereunder. These statements shall be prepared and submitted on a
13 schedule that will permit them to be reviewed by the City upon request.

14 5.

15 A. PCA shall prepare and file with City a complete annual
16 financial report no later than November 15, 2015, covering the period October 1,
17 2014 through September 30, 2015 and accounting for the Three Hundred Fifty-
18 Four Thousand Three Hundred Dollars (\$354,300) allocated to PCA under Section
19 2 hereof. At that time, PCA shall return to City any revenues undistributed or
20 unexpended by it on or prior to September 30, 2015. Said financial report shall be
21 certified by PCA's senior executive officer to indicate that all expenditures are
22 supported by receipts, invoices, vouchers or other appropriate documentation and
23 that such expenditures were made in accordance with this Agreement. PCA shall
24 maintain books, financial records and files as necessary to support its certified
25 financial statements. The City Auditor and other appropriate City personnel shall
26 have the right to examine and audit the statements and supporting books, records
27 and files for three years following the expiration or sooner termination of this
28 Agreement.

1 B. Notwithstanding anything to the contrary herein, the City
2 Manager may approve the retention by PCA of funds allocated to specific arts and
3 cultural groups and artists during 2014-2015 and not spent by September 30,
4 2015, so long as he finds that adequate progress and timely completion of the
5 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly
6 status reports on such projects and shall expedite completion in a form satisfactory
7 to the City Manager.

8 C. On or before October 30, 2015, PCA shall secure from each
9 arts and cultural group identified in Exhibit "B" a comprehensive annual financial
10 statement for the period October 1, 2014 through September 30, 2015. Said
11 financial statement shall be reviewed, audited and approved by each group's
12 board, and shall be forwarded to the City Manager, together with a copy of the
13 applicable report based on said review, or part of the annual financial statement.

14 6. PCA shall maintain a current commercial checking account at a
15 commercial bank in which all funds granted under this Agreement are immediately
16 deposited when received and from which all payments are made for PCA's expenses for
17 programs and for services. The balance in this bank account and such reconciliation
18 shall be certified by the senior executive officer of PCA.

19 7. PCA shall not use any of its funds for political campaign contributions
20 or for promotions of political candidates or any other political purpose.

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

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

27 10. City, its officials and employees shall not have any control over the
28 conduct of PCA's activities or the employees of PCA. PCA expressly warrants that it will

1 not at any time or in any manner represent that PCA or any of PCA's agents, volunteers,
2 subscribers, members, officers or employees are in any manner the agents, volunteers,
3 subscribers, officers or employees of City.

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

21 12. As a condition precedent to the effectiveness of this Agreement,
22 PCA shall procure and maintain at PCA's expense for the duration of this Agreement
23 from insurance companies that are admitted to write insurance in California or from
24 authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII
25 by A.M. Best Company:

26 (a) Commercial general liability insurance (equivalent in scope to ISO
27 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million
28 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general

1 aggregate. Such coverage shall include but not be limited to broad form
2 contractual liability, cross liability, independent contractors liability, and products
3 and completed operations liability. The City, its officials, employees and agents
4 shall be named as additional insureds by endorsement (on City's endorsement
5 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG
6 20 26 11 85), and this insurance shall contain no special limitations on the scope
7 of protection given to the City, its officials, employees and agents.

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

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

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

17 Any self-insurance program, self-insured retention, or deductible must be
18 separately approved in writing by City's Risk Manager or designee and shall protect City,
19 its officials, employees and agents in the same manner and to the same extent as they
20 would have been protected had the policy or policies not contained retention or
21 deductible provisions. Each insurance policy shall be endorsed to state that coverage
22 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
23 notice to City, and shall be primary and not contributing to any other insurance or self-
24 insurance maintained by City. PCA shall notify the City in writing within five (5) days after
25 any insurance required herein has been voided by the insurer or cancelled by the
26 insured.

27 PCA shall require that all contractors and subcontractors which PCA uses
28 in the performance of services hereunder maintain insurance in compliance with this

1 Section unless otherwise agreed in writing by City's Risk Manager or designee.

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

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

18 The procuring or existence of insurance shall not be construed or deemed
19 as a limitation on liability relating to PCA's performance or as full performance of or
20 compliance with the indemnification provisions of this Agreement.

21 13. This Agreement contemplates the unique role and responsibilities of
22 PCA and the parties acknowledge that a substantial inducement to City for entering this
23 Agreement was and is that uniqueness. As a result, PCA shall not assign its rights or
24 delegate its duties hereunder, or any interest herein, or any portion hereof, without the
25 prior written consent of City. Any attempted assignment or delegation shall be void, and
26 any assignee or delegate shall acquire no right or interest by reason of such attempted
27 assignment or delegation. PCA shall not subcontract any portion of the performance
28 required hereunder. Nothing in this Section 13 shall prevent PCA from employing as

1 many employees as PCA deems necessary for performance of this Agreement.

2 14. Any notice required hereunder or desired to be given by either party
3 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
4 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California
5 90802 Attn: City Manager and to PCA at the address first shown herein. Change of
6 address shall be given in the same manner as stated herein. Notice shall be deemed
7 given on the date deposited in the mail or on the date personal delivery is made,
8 whichever first occurs.

9 15. The term of this Agreement shall begin at 12:01 a.m. on October 1,
10 2014, and shall terminate at midnight on September 30, 2015. Either party may
11 terminate this Agreement by giving thirty (30) days prior notice to the other party. The
12 complete annual financial report required by Section 5 shall be filed no later than
13 November 15, 2015, and any revenues to be returned shall be returned at the time of
14 said filing, unless otherwise allocated, with the approval of the City Manager.

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

17 17. The acceptance of performance or the payment of any money by
18 City shall not operate as a waiver of any provision of this Agreement, or of any right to
19 damages or indemnity stated in this Agreement. The waiver of any breach of this
20 Agreement shall not constitute a waiver of any other or subsequent breach of this
21 Agreement.

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

26 19. This Agreement shall not be amended, nor any provision or breach
27 hereof waived, except in writing signed by the parties which expressly refers to this
28 Agreement.

1 20. This Agreement shall be governed by and construed pursuant to the
2 laws of the State of California.

3 21. This Agreement constitutes the entire understanding between the
4 parties and supersedes all other agreements, whether oral or written, with respect to the
5 subject matter herein.

6 22. In the event that there is any legal proceeding between the parties to
7 enforce or interpret this Agreement or to protect or establish any rights or remedies
8 hereunder, the prevailing party shall be entitled to its costs and expenses, including
9 reasonable attorney's fees.

10 23. Subject to applicable laws, rules and regulations, PCA shall not
11 discriminate in the performance of this Agreement on the basis of race, religion, national
12 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
13 disability.

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

3 PUBLIC CORPORATION FOR THE ARTS
4 OF THE CITY OF LONG BEACH, a
5 California nonprofit corporation, doing
6 business as ARTS COUNCIL FOR LONG
7 BEACH

8 NOVEMBER 19, 2014

9 By [Signature]
10 Name: MARCO SCHINDELMANN
11 Title: Board President

12 NOVEMBER 19, 2014

13 By [Signature]
14 Name: VICTORIA BRYAN
15 Title: Executive Director

16 "PCA"

17 CITY OF LONG BEACH, a municipal
18 corporation

19 November 21, 2014

20 By [Signature] EXECUTED PURSUANT
21 TO SECTION 301 OF
22 THE CITY CHARTER.
23 City Manager
24 Assistant City Manager

25 "City"

26 This Agreement is approved as to form on 11/21, 2014.

27 CHARLES PARKIN, City Attorney

28 By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

Exhibit A
PCA Operating Budget FY 2014-15: October 1, 2014 through September 30, 2015

Total Budget

Staff Costs:	FY 2014-15	Admin	Fundraising	Grants & Training	Marketing	Neighborhoods	Design/ Public Art	City Support	Notes:
Admin Salaries & Benefits	86,206	68,806		4,400	8,600	4,400	-	81,805.80	Executive Director; Administrative Manager
Percentage of total budget	11.24%	8.98%	0.00%	0.57%	1.12%	0.57%	0.00%	10.67%	
Operations									
Advocacy	-	-							
Audit/Legal Fees	10,000	10,000						10,000.00	
Bank/Payroll/Serv	2,500	2,500						1,075.00	
Equipment/Computers	5,000	5,000						2,150.00	
Fundraising (Development)	25,000		25,000						
Insurance	5,500	5,500						2,000.00	Property / Liability
Maintenance	700	700							
Memberships	-	-	-	-					
Meetings/Travel/Conferences	1,500	1,500							
Miscellaneous-License etc	1,000	1,000							
Outside Consultants	39,440	37,440					2,000.00	17,516.00	Accounting;
Postage	1,031	1,031						443.19	
Printing + Stationery Supplies	500				500				
Rent	38,523	38,523							
Parking	1,500	1,500						645.00	
Supplies	3,500	3,500						1,505.00	
Telephone & Internet	4,653	4,653						2,000.93	
Reserve Fund	-	-							
Total Operations	140,347	112,847	25,000	-	500	-	2,000	37,335	
Percentage of total budget	18.31%	14.72%	3.26%	0.00%	0.07%	0.00%	0.26%	4.87%	
Programs									
Allocations-Granting Program	193,375	-		190,000		3,375		190,000.00	
Special Events Program/Marketing	83,250	33,250			50,000			50,000.00	
Arts Learning	79,015					79,015			
Public Art	11,000						11,000.00		
Program Administration	173,428	-	-	48,851	28,251	67,331	28,995.00	45,159.00	
Program Total:	540,068	33,250	-	238,851	78,251	149,721	39,995	285,159	
percentage of revenue of total budg	70.45%	4.34%	0.00%	31.16%	10.21%	19.53%	5.22%	37.20%	
Total Expenses-PCA & PA	766,621	214,903	25,000	243,251	87,351	154,121	41,995	404,300	(50,000)
Percentage of total budget	100.00%	28.03%	3.26%	31.73%	11.39%	20.10%	5.48%	52.74%	

Exhibit A-1

City of Long Beach Challenge Grant for Arts Council for Long Beach Fiscal Year 2014-2015

The City of Long Beach is providing a one-time Challenge Grant up to \$50,000 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, 2014 to September 30, 2015 from non-governmental sources for the marketing of the arts and cultural community of Long Beach. Detailed provisions of the Challenge Grant are below.

Challenge Grant Provisions:

1. Donations should be received from individual donors, foundations or corporations for the marketing of the arts and cultural community of Long Beach. The City will match new donations on a one-to-one basis. The City will not match donations from other sources. The donations will not be matched if the money is intended to be used for or is used for general operations of the Arts Council. The City will match up to \$50,000 of the amount of said donations received during the fiscal year.
2. The Arts Council must submit evidence (suitable to the City) of new donations made for the marketing of the arts and cultural community of Long Beach during the fiscal year beginning October 1, 2014 and ending on September 30, 2015. All evidence must be submitted to the City Manager's Office no later than October 2, 2015. The Arts Council can submit evidence to the City at the same time its installment invoice is given to the City for payment of the other allocated funding under the contract (\$354,300). The City may request reasonable reports or information to ensure grant compliance.
3. Any grant funds not utilized for the intended purpose by September 30, 2016 (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 to be used in any way to determine compensation or bonuses.

2014-2015 Grant Awards

Exhibit B

	1st payment 1/15/15	2nd payment 5/15/15	3rd payment 11/15/15	Total Award
ARTIST FELLOWSHIP	100%	0%	0%	
Olga Lah	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
Pamela K. Johnson	\$3,000.00	XXXXXX	XXXXXX	\$ 3,000
Carole Frances Lung	\$2,000.00	XXXXXX	XXXXXX	\$ 2,000
Sunny Nash	\$2,000.00	XXXXXX	XXXXXX	\$ 2,000
Yulya Dukhovny	\$2,000.00	XXXXXX	XXXXXX	\$ 2,000
				\$ 12,000.00

OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)	33%	33%	34%	
Khmer Arts Academy	1,599.53	1,599.53	1,648.00	\$ 4,847.06
Long Beach Playhouse	1,700.47	1,700.47	1,752.00	\$ 5,152.94
				\$ 10,000.00

OPERATING GRANTS, LEVEL II (budgets >\$1M)	33%	33%	34%	
Musical Theatre West	5,753.78	5,753.78	5,928.14	\$ 17,435.71
Long Beach Opera	5,830.74	5,830.74	6,007.43	\$ 17,668.90
International City Theatre	5,848.50	5,848.50	6,025.72	\$ 17,722.72
Arts and Services for the Disabled	5,872.18	5,872.18	6,050.12	\$ 17,794.47
Long Beach Symphony Orchestra	5,872.18	5,872.18	6,050.12	\$ 17,794.47
Museum of Latin American Art	6,132.63	6,132.63	6,318.46	\$ 18,583.73
Long Beach Museum of Art	-	-	-	\$ -
				\$ 107,000.00

COMMUNITY PROJECT GRANTS	50%		50%	
Homeland Cultural Center	2,500.00	XXXXXX	2,500.00	\$ 5,000
The Jazz Angels	2,500.00	XXXXXX	2,500.00	\$ 5,000
Carpenter Performing Arts Center	2,000.00	XXXXXX	2,000.00	\$ 4,000
Hmong Association of Long Beach	1,625.00	XXXXXX	1,625.00	\$ 3,250
The Rock Club- Rock for Vets	1,625.00	XXXXXX	1,625.00	\$ 3,250
Cambodia Town Culture Festival	1,500.00	XXXXXX	1,500.00	\$ 3,000
Long Beach Camerata Singers	1,500.00	XXXXXX	1,500.00	\$ 3,000
Long Beach Community Band	1,125.00	XXXXXX	1,125.00	\$ 2,250
University Art Museum	1,125.00	XXXXXX	1,125.00	\$ 2,250
The Garage Theatre	1,000.00	XXXXXX	1,000.00	\$ 2,000
Khmer Girls in Action	500.00	XXXXXX	500.00	\$ 1,000
South Coast Dance Arts Alliance	500.00	XXXXXX	500.00	\$ 1,000
				\$ 35,000.00

SUB TOTAL GRANT AWARDS FOR 2014-15	\$68,110.00	\$38,610.00	\$57,279.99	\$ 164,000.00
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Monthly Micro Grant Awards \$ 26,000.00

TOTAL GRANT AWARDS FOR 2014-15	\$ 190,000.00
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