Kobert E. Snannon City Attorney of Long Beach 333 West Ocean Boulevard ong Beach, California 90802-4664 Telephone (562) 570-2200

AGREEMENT

THIS AGREEMENT is made and entered in duplicate as of October 3, 2006 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 3, 2006, by and between the PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, INC., a California nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH, with a place of business at 110 West Ocean Boulevard, Suite 20, 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 Long Beach 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:

Section 1. The above recitals are incorporated herein.

Section 2. A. In accordance with the allocation authorized by the City Council pursuant to the recommendation of the PCA, City shall pay to PCA a sum not to exceed Six Hundred Thousand Dollars (\$600,000.00) during the City's fiscal year 2006-2007 to provide financial support in the amounts shown on Exhibit "A", attached hereto and incorporated herein by this reference: (a) to offset PCA operating budget costs including administration, staff coordination, and fundraising for the 2007 Smithsonian Week activities, in the amount of Three Hundred Thousand Dollars (\$300,000.00); and (b) for grants in the amount of Three Hundred Thousand Dollars (\$300,000.00), as shown on Exhibit "B" attached hereto.

The organizations and artists shown on Exhibit "B" as receiving "Regional Residential Program Grants", "Community Program Grants", "Community Program

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Grants II", and "Professional Artists Fellowships" must apply for support and successfully meet PCA's established criteria for support. City shall pay \$600,000.00 to PCA in installments as follows: Three Hundred Thirty Thousand Dollars (\$330,000.00) on City's execution of this Agreement and the remaining amount of Two Hundred Seventy Thousand Dollars (\$270,000.00) in installments of Ninety Thousand Dollars (\$90,000.00) each on January 2, 2007, on April 2, 2007, and on July 2, 2007.

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

Section 3. Before any payment is made on invoices from each arts and cultural group and artist shown on Exhibit "B", PCA shall assure that the funds requested will be used appropriately to promote cultural and arts activities in Long Beach to the benefit of the Long Beach citizenry and shall so certify in the performance report required in Section 4 below.

Section 4. On or before January 2, 2007, April 2, 2007, July 2, 2007 and October 1, 2007, PCA shall submit to City a performance report of its activities, which report shall include a statement of all arts and cultural groups and artists to whom funds were distributed during the preceding three-month period and certification that each such group or artist met the provisions of this Agreement. PCA shall require that the arts and cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit an interim and final report statement to PCA, setting forth the group's financial condition and disclosure of all expenses, revenues, and fund balances relating to funds given to said groups hereunder. These statements shall be prepared and submitted on a schedule that

will permit them to be reviewed by the City upon request.

Section 5. A. PCA shall prepare and file with City a complete annual financial report no later than November 15, 2007, covering the period October 1, 2006 through September 30, 2007 and accounting for the Six Hundred Thousand (\$600,000.00) allocated to PCA under Section 2 hereof. At that time, PCA shall return to City any revenues undistributed or unexpended by it on or prior to September 30, 2007. Said financial report shall be certified by PCA's senior executive officer to indicate that all expenditures are supported by receipts, invoices, vouchers or other appropriate documentation and that such expenditures were made in accordance with this Agreement. PCA shall maintain books, financial records and files as necessary to support its certified financial statements. The City Auditor and other appropriate City personnel shall have the right to examine and audit the statements and supporting books, records and files for three years following the expiration or sooner termination of this Agreement.

- B. Notwithstanding anything to the contrary herein, the City Manager may approve the retention by PCA of funds allocated to specific arts and cultural groups and artists during 2006-2007 and not spent by September 30, 2007, so long as he finds that adequate progress and timely completion of the projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly status reports on such projects and shall expedite completion in a form satisfactory to the City Manager.
- C. On or before October 30, 2007, PCA shall secure from each arts and cultural group identified in Exhibit "B" a comprehensive annual financial statement for the period October 1, 2006 through September 30, 2007. Said financial statement shall be reviewed, audited and approved by each group's board, and shall be forwarded to the City Manager, together with a copy of the applicable report based on said review, or part of the annual financial statement.
- Section 6. PCA shall maintain a current commercial checking account at a commercial bank in which all funds granted under this Agreement are immediately deposited when received and from which all payments are made for PCA's expenses for

programs and for services. The balance in this bank account and such reconciliation shall be certified by the senior executive officer of PCA.

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

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

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

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

Section 11. PCA shall with respect to this Agreement indemnify and hold harmless City, its officials, employees and agents (collectively in this Section "City') from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including reasonable attorney's fees, court costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims include by way of example but are not limited to: Claims for property damage, personal injury or death arising in whole or in part from any negligent act or omission of PCA, its officers, employees, agents, or anyone under PCA's control (collectively "Indemnitor"); PCA's breach of this Agreement; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating in any way to worker's compensation. Independent of the duty to indemnify and as a free-standing duty on the part of PCA, PCA shall defend the City and shall continue such defense until the Claim (including allegations in a Claim) is

resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise. PCA shall notify the City of any Claim within ten (10) days. Likewise, the City shall notify PCA of any Claim, shall tender the defense of such Claim to PCA, and shall assist PCA, as may be reasonably requested, in such defense.

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

- (a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to the City, its officials, employees and agents.
- (b) Workers' Compensation insurance as required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000).
- (c) Professional or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.
- (d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount

not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

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

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

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

Any modification or waiver of the insurance requirements herein shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, the City's Risk Manager or designee may require that PCA, PCA's contractors and subcontractors change the amount, scope or types of coverages required herein if, in

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

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

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

Section 15. The term of this Agreement shall begin at 12:01 a.m. on October 1, 2006, and shall terminate at midnight on September 30, 2007. Either party may terminate this Agreement by giving thirty (30) days prior notice to the other party. The complete annual financial report required by Section 5 shall be filed no later than November 15, 2007, and any revenues to be returned shall be returned at the time of said filing, unless otherwise allocated, with the approval of the City Manager.

Section 16. The City Manager or designee shall administer this Agreement

and all matters in connection herewith, and his decision shall be final.

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

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

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

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

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

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

Section 23. Subject to applicable laws, rules and regulations, PCA shall not discriminate in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS related condition, age, disability, handicap, or Vietnam Era veteran status.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement

	l l						
	1	with all formalities required by law as of	the date first stated above.				
	2		PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH INC. a California				
	3	i	THE CITY OF LONG BEACH, INC., a California nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH				
	4	October 9,2006	By Minnie Douglas				
	5		Minnie President				
	6	,2006	By My (Type or Print Name)				
	7		Secretary Jenry Wukk				
	8		(Type or Print Name)				
	9		"PCA"				
	10		CITY OF LONG BEACH, a municipal corporation				
	11		•				
each 'ard '02-466	12	(Maho(3), 2006	City Manager				
hannon Long B Bouley nia 908	13		"City"				
rt E. Siney of Ocean Californe (562	14		1				
Robe Attor West Geach,	15	This Agreement is approve	ed as to form on				
City 333 Long B	16		ROBERT E. SHANNON, City Attorney				
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EXHIBIT A
PCA Operating Budget FY 2007: October 1, 2006 through September 30, 2007

	TOTAL BUDGET			Grants &			Design/	City	
	FY 2007	Admin.	Fundraising	Training	Marketing	Neighborhoods	Public Art	Support	
Staff (+Other Consult)	278,825	206,331	13,049	18,124	15,949	25,373		174,384	Exec. Director; Office
Percentage of total budget	15.91%	11.77%	0.74%	1.03%	0.91%	1.45%		9.95%	Manager.;Executive Asst
Operations:									
Advocacy	1,000	1,000							
Audit/Legal Fees	9,000	9,000							Audit & Tax Returns
Bank/Payroll Fees	5,000	5,000							Payroll & bank fees
Equipment/Computers	20,500	20,500						4,500	Copier; Postal meter lease;
Fundraising	10,350		10,350						
Insurance	5,500	5,500						3,000	Property/Liability
Maintenance	3,000	3,000							
Memberships	2,100	2,100							
Meetings/Travel	6,200	6,200							
Outside Consultants	36,000	26,640	1,685	2,340	2,059	3,276		26,640	Accountant ind consultant
Outside Staffing	-	-							
Postage	6,000	6,000						6,000	Postage
Printing	5,000	5,000							Non-newsletter printing
Rent/Parking	42,350	42,350						11,000	Rent
Security	-	-							
Special Events Cost	-	•							
Supplies	4,000	4,000						3,500	Supplies
Telephone	5,000	5,000							
Utilities	-	-							
Misc. (Licenses, etc)	100	100			1				
Total Operations	161,100	141,390	12,035	2,340	2,059	3,276	-	68,140	
Percentage of total budget	9.19%	8.07%	0.69%	0.13%	0.12%	0.19%	0.00%	3.89%	
Programs:			<u> </u>		<u></u>				
Grants & Residencies	315,531			315,531				300,000	Grants Program
Marketing Projects	117.000				117,000		·		Graphic Designer & Mktg Asst
Neighborhoods Programs	296,400					296,400			
Public Art	216,750				 		216,750		
	2.0,700								Grants Admin-Salary +
Program Administration	367,278			74,197	99,363	85,427	108,291	57,476	1
Program Total:	1,312,959	-	-	389,728	216,363	381,827	325,041	357,476	
Percentage of total budget	74.90%	0.00%	0.00%	22.23%	12.34%				,
TOTAL EXPENSES:	1,752,884	347,721	25,084	410,192	234,371	410,476	325,041	600,000	
Percentage of total budget		19.84%	1.43%	23.40%	13.37%	23.42%	18.54%	34.23%)

Arts Council for Long Beach FY2007 Grant Awards

EXHIBIT B

		E	XHIBIT B			
	Professional Artist Fellowship	· · · · · · · · · · · · · · · · · · ·				
	Name	2007 Awards	Payment Oct 16 2006	Payment Feb 15 2007	Payment May 15 2007	Payment Oct 15 2007
1	Barry Cogert	\$3,000	\$3,000	n/a	n/a	n/a
	Margie Darrow-Stretz	\$2,000	\$2,000	n/a	n/a	n/a
_	Shea Gauer	\$2,000	\$2,000	n/a	n/a	n/a
4	Linda Sohl-Ellison	\$1,000	\$1,000	n/a	n/a	n/a
5	Morgyn Owens-Celli	\$1,000	\$1,000	n/a	n/a	n/a
	Betsy Lohrer Hall	\$1,000	\$1,000	n/a	n/a	n/a
	***************************************	\$10,000	\$10,000			<u> </u>
	The Margaret McKinney Folk & Traditional Arts Fellowship*					
	Name	Award				
1	Sophy Nuth	\$1,200	\$1,200	n/a	n/a	n/a
		\$1,200	\$1,200			
	Neighborhood Project Grant					
	Organization	Awards	Oct 16	Feb 15	May 15	Oct 15
1	Long Beach Museum of Art	\$1,500	\$1,125	n/a	n/a	\$375
2	First Congregational Church	\$1,300	\$975	n/a	n/a	\$325
3	Community Partners Council	\$1,500	\$1,125	n/a	n/a	\$375
4	Flood	\$1,500	\$1,125	n/a	n/a	\$375
5	Khmer Girls in Action	\$1,500	\$1,125	n/a	n/a	\$375
6	Earl B. and Loraine H. Miller Japanes		\$1,125	n/a	n/a	\$375
7	Boys & Girls Clubs of Long Beach	\$1,400	\$1,050	n/a	n/a	\$350
8	East Village Neighborhood	\$1,400	\$1,050	n/a	n/a	\$350
9	West Side Mural Project	\$1,400	\$1,050	n/a	n/a	\$350
10	Regina Klenjoski Dance Company	\$1,000	\$750	n/a	n/a	\$250
	NAACP Long Beach Branch	\$1,000	\$750	n/a	n/a	\$250
	2nd Saturday Art Walk	\$1,000	\$750	n/a	n/a	\$250
	proj-ectPro:ject	\$1,000	\$750	n/a	n/a	\$250
	The Gaian Mind	\$750	\$563	n/a	n/a	\$187
15	Gabriela Perez Ugalde	\$750	\$563	n/a	n/a	\$187
	Exposure	\$750	\$563	n/a	n/a	\$187
	H'artWorks, Inc.	\$750	\$563	n/a	n/a	\$187
		\$20,000				\$4,998
	Community Project Grant**					
	Organization	Awards	Oct 16	Feb 15	May 15	Oct 15
1	South Coast Dance Arts Alliance	\$6,249	\$1,562	\$1,562	\$1,562	
2	Khmer Arts Academy	\$5,249	\$1,312	\$1,312	\$1,312	\$1,313
3	for Disabled	\$4,951	\$1,237	\$1,238	\$1,238	\$1,238
4	Second City Council	\$4,949	\$1,237	\$1,237	\$1,237	
5	Camerata Singers	\$4,749	\$1,187	\$1,187	\$1,187	
6	Long Beach Community Band	\$4,749	\$1,187	\$1,187	\$1,187	
7	Partners of Parks	\$4,549	\$1,137	\$1,137	\$1,137	
8	Excelsus Music Collaborators, Inc.	\$4,549	\$1,137	\$1,137	\$1,137	
9	Garage Theatre	\$4,549	\$1,137	\$1,137	\$1,137	
10	South Coast Chorale	\$4,549	\$1,137	\$1,137	\$1,137	
	Historical Society of Long Beach	\$4,549	\$1,137	\$1,137	\$1,137	
	Hmong Association	\$4,349	\$1,087	\$1,087	\$1,087	
	Carpenter Performing Arts Center	\$4,349	\$1,087	\$1,087	\$1,087	
	East Village Arts District	\$4,149	\$1,037	\$1,037	\$1,037	
	Long Beach Chorale and Chamber					
15	Orchestra	\$4,149	\$1,037		\$1,037	
		\$70,637	\$ 17.655	\$ 17.656	¢ 17.656	¢ 17.670

2007 Master Funding List for City

17,656 \$

17,656 \$

Arts Council for Long Beach FY2007 Grant Awards

EXHIBIT B

	Operating Grant					
	Organization	Awards	Oct 16	Feb 15	May 15	Oct 15
1	Long Beach Symphony Orchestra	\$47,213.11	\$11,803.28	\$11,803.28	\$11,803.28	\$11,803.27
2	Museum of Latin American Art	\$40,655.74	\$10,163.94	\$10,163.94	\$10,163.94	\$10,163.92
3	Musical Theatre West	\$39,344.26	\$9,836.06	\$9,836.06	\$9,836.06	\$9,836.08
4	International City Theatre	\$37,377.05	\$9,344.26	\$9,344.26	\$9,344.26	
	Long Beach Opera	\$35,409.84	\$8,852.46	\$8,852.46	\$8,852.46	\$8,852.46
		\$200,000	\$50,000	\$50,000	\$50,000	\$50,000
		\$301,837	\$93,857	\$67,656	\$67,656	\$72,668

^{*\$1,200} will be awarded in FY07 from private Arts Council funds.

^{**}An additional \$637 in city funds will be awarded in FY07 from unfilled FY06 grants.