

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

1 FIRST AMENDMENT TO GRANT AGREEMENT

2 **31146**

3 THIS FIRST AMENDMENT TO GRANT AGREEMENT is made and
4 entered, in duplicate, as of December 1, 2013 for reference purposes only, pursuant to a
5 minute order adopted by the City Council of the City of Long Beach at its meeting on
6 December 3, 2013, by and between the LONG BEACH PUBLIC LIBRARY
7 FOUNDATION, a California non-profit public benefit corporation ("Foundation"), and the
8 CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, the City periodically supports public service organizations
10 through a variety of programs, grants, and other means when there is a public purpose
11 and benefit, such as the City's support of the Public Corporation for the Arts; and

12 WHEREAS, the City and Foundation entered into that certain Grant
13 Agreement dated December 11, 2008, memorializing the Foundation's role in the
14 acceptance and expenditure of grant funds and bequests to the Long Beach Public
15 Library ("Library"), and the Foundations' expenditure of funds and implementation of
16 programs in support of the Library; and

17 WHEREAS, the parties now desire to extend the term of the Grant
18 Agreement for an additional five (5) years with one (1) five-year option to extend, and
19 such other terms and conditions as are set forth below;

20 NOW, THEREFORE, in consideration of the mutual terms and conditions
21 contained herein, the parties agree as follows:

22 1. Recitals. The above recitals are true and correct and are
23 incorporated herein by this reference.

24 2. Grants. The City desires to utilize the assistance of the Foundation
25 to process administer and implement funds received by the Library in the form of
26 bequests and grants from third parties (which grants shall hereinafter referred to as
27 "Original Grants"), subject to the conditions contained in this Agreement and the
28 Foundation desires to provide such assistance subject to the terms and conditions stated

1 herein. If the Library originally received funds as an Original Grant, then the funds
2 transferred by the Library to the Foundation shall be known as a "Pass Through Grant".
3 Bequests and Pass Through Grants shall collectively be known as "Grant Funds".

4 3. Conditions of Grant.

5 A. In conjunction with a Pass Through Grant to the Foundation,
6 the Library will deliver to the Foundation documents that the Library receives
7 relating to the Original Grant including but not limited to correspondence, grant
8 applications and grant agreements and the Foundation shall comply with the
9 special restrictions described in the Original Grant and with any other special
10 restrictions of the Library. In conjunction with a grant to the Foundation that was
11 originally a bequest to the Library, the Library will deliver to the Foundation
12 documents that the Library receives relating to the bequest including but not
13 limited to Notices of Hearing, copies of notices published in the newspaper relating
14 to the probate of estates, and correspondence and the Foundation shall comply
15 with the special restrictions described in the bequest and with any other special
16 restrictions imposed by the Library.

17 B. Further, the Foundation shall: (i) hold the Grant Funds in a
18 separate fund to be known as the City Library Endowment Fund provided,
19 however, that all interest earned on this City Library Endowment Fund, if any, shall
20 belong to the Library and be added to the City Library Endowment Fund and
21 further provided that each bequest, Original Grant and Pass Through Grant shall
22 be identified and held in a separate account; (ii) separately account for monies in
23 the City Library Endowment Fund apart from all other monies held by Foundation,
24 in accordance with generally accepted accounting principles; (iii) adhere to the
25 restrictions placed by the City's Director of Library Services and grantor on each
26 bequest, Original Grant or Pass Through Grant as identified by the City's Director
27 of Library Services at the time that each bequest, Original Grant or Pass Through
28 Grant is given to the Foundation hereunder; (iv) on or before the fifteenth (15th)

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1 day of the month following the calendar quarter to which the report relates, submit
2 a quarterly report to the Library in the form attached as Exhibit "A" and
3 incorporated herein by reference that shows expenditures by the Foundation from
4 the City Library Endowment Fund, transfers of monies from the City Library
5 Endowment Fund to the Library, and the interest earned and administrative fee
6 payable for such quarter; (v) administer a Pass Through Grant as required by the
7 terms and conditions of the Pass Through Grant and administer a bequest as
8 required by the terms and conditions of the bequest; and (vi) comply with all other
9 provisions of this Amendment in any way relating to the City Library Endowment
10 Fund. The Foundation shall not expend monies in the City Endowment Library
11 Fund except as expressly described above.

12 C. With respect to a grant, the Foundation shall not expend any
13 monies in the City Library Endowment Fund to obtain additional Original Grants
14 with out the prior written approval of the Director of the Library. With respect to the
15 Foundation's obligation to administer a Pass Through Grant, the parties
16 acknowledge that any administrative fee that is part of the Pass Through Grant
17 may be retained by the Foundation as consideration for such obligation and that
18 the Library shall not owe further sums to the Foundation to reimburse the
19 Foundation for any monies expended by the Foundation in the administration of
20 the Pass Through Grant.

21 D. As an administrative fee, Foundation will be paid up to one
22 percent (1%) per annum on the average daily balance in the City Library
23 Endowment Fund payable monthly in arrears.

24 E. Foundation shall submit an invoice to the City for the
25 administrative fee, if any, within fifteen (15) days after the end of each calendar
26 quarter, which invoice shall accompany the reports due pursuant to Section 3.B
27 above. Provided that the reports accompany the invoice, the City acting through
28 the Director of Library Services shall give its written authorization for payment of

1 the administrative fee via withdrawal by Foundation from the City Library
2 Endowment Fund.

3 F. In addition to monetary grants and gifts, the Foundation may
4 also support the Library and its programs through the procurement of books,
5 computers, equipment materials and personnel time or contract positions. This
6 procurement may be in the form of outright gifts of physical materials and
7 equipment, facilitation of in-kind gifts of items from third parties, or loans of
8 property from partners and/or donors, to benefit the Library. In some cases the
9 Foundation may enter partnerships, contracts, or employ individuals or companies
10 to help support the Library and its programs. In these cases, the Foundation is
11 responsible for executing MOUs, contracts, insurance and tax reporting for any
12 partnerships or positions hired through the Foundation, and carries the liability for
13 any loaned equipment or materials.

14 4. Term. The term of this Amendment shall begin on December 1,
15 2008, and shall end at midnight on November 30, 2018, unless sooner terminated as
16 provided herein. The parties may extend the term for one additional five-year period. At
17 the expiration or sooner termination of this Amendment, Grant Funds remaining in the
18 City Library Endowment Fund shall be returned to the City within fifteen (15) days. Either
19 party may terminate this Amendment for any or no reason by giving thirty (30) days prior
20 notice to the other party.

21 5. Records and Audit.

22 A. Foundation shall keep or cause to be kept in accordance with
23 generally accepted accounting principles full and complete books of account and
24 other records reflecting all transactions related to this Amendment, including but
25 not limited to expenditures of monies in the City Library Endowment Fund.

26 B. City shall have the right at all reasonable times during the
27 term of this Amendment and for a period of five (5) years after termination or
28 expiration to examine, audit, inspect, review, extract information from, and copy all

1 books, records, accounts, and other documents of Foundation relating to the funds
2 transferred pursuant to this Amendment. Foundation shall make such books and
3 records available for inspection by the City during regular business hours and
4 Foundation shall cooperate fully with the City and its representative in any audit.

5 6. Bond. As a condition precedent to the effectiveness of this
6 Amendment, Foundation shall obtain and maintain during the term of this Amendment a
7 blanket honesty bond in an amount not less than One Hundred Thousand Dollars
8 (\$100,000.00). Foundation shall deliver the bond to the City for approval as to sufficiency
9 and form prior to receipt of funds hereunder. If the City requests an increase to the
10 amount of the honesty bond, Foundation agrees to promptly purchase such additional
11 coverage in the amount specified by the City.

12 7. No Assignment. Foundation shall not assign its rights or delegate its
13 duties hereunder, or any interest herein, or any portion hereof. Any attempted
14 assignment or delegation shall be void and any purported assignee or delegate shall
15 acquire no right or interest by reason of such attempted assignment or delegation.

16 8. Indemnity. Foundation shall, with respect to its obligations and
17 performance under this Amendment, indemnify and hold harmless the City, its officials,
18 employees and agents (collectively in this Section "City") from and against any and all
19 liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs
20 and expenses (including attorney's fees, court costs, and expert and witness
21 fees)(collectively, "Claims" or individually "Claim"). Claims include allegations and
22 include by way of example but are not limited to: Claims for property damage, personal
23 injury or death arising in whole or in part from any negligent act or omission of
24 Foundation, its officers, directors, employees, agents or anyone under Foundation's
25 control (collectively "Indemnitor"); Foundation's breach of this Amendment;
26 misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating
27 in any way to worker's compensation. Independent of the duty to indemnify and as a
28 free-standing duty on the part of Foundation, Foundation shall defend City and shall

1 .continue such defense until the Claim is resolved, whether by settlement, judgment or
2 otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of
3 Indemnitor shall be required for the duty to defend to arise. Foundation shall notify the
4 City of any claim within ten (10) days.

5 This Section shall survive termination of this Amendment.

6 9. Notice. Any notice given hereunder shall be in writing and personally
7 delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed
8 to Foundation at 101 Pacific Avenue, Long Beach, CA 90802 Attn: President, and to City
9 at 101 Pacific Avenue, Long Beach, CA 90802 Attn: Director, Library Services. Notice of
10 change of address shall be given in the same manner as stated herein for other notices.
11 Notice shall be deemed given on the date personal delivery is made or on the date
12 deposited in the mail, whichever first occurs.

13 10. Miscellaneous.

14 A. The grant of funds by the Library after giving notice of default
15 to Foundation shall not operate as a waiver of any provision of this Amendment, or
16 of any right to indemnity hereunder. The waiver of any default shall not constitute
17 a waiver of any other or subsequent default.

18 B. This Amendment shall not be amended nor any provision or
19 default waived except in writing signed by the parties.

20 C. This Amendment shall be governed by and construed
21 pursuant to the laws of the State of California.

22 D. In its performance of this Amendment, Foundation shall
23 comply with all laws, rules, regulations, and ordinances of federal, state, and local
24 governmental authorities.

25 E. This Amendment constitutes the entire understanding
26 between the parties and supersedes all other agreements, oral or written, with
27 respect to the subject matter herein.

28 F. This Amendment is not intended or designed to or entered for

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1 the purpose of creating any benefit or right for any person or entity that is not a
2 party to this Amendment. This Amendment is created as a joint effort of the
3 parties and shall not be construed against either party as the drafter.

4 G. The headings of this Amendment and the grouping of
5 provisions into sections and paragraphs is for the convenience of the parties only
6 and shall not be construed as a part of this Amendment.

7 H. This Amendment is not intended to and shall not be construed
8 to create a principal-agent relationship between the City or the Library and the
9 Foundation and Foundation shall not hold itself out as an agent of the City or the
10 Library. This Amendment is not intended to and shall not be construed to create a
11 partnership, joint venture or any other relationship between the parties.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

LONG BEACH PUBLIC LIBRARY
FOUNDATION

June 10, 2013⁴

By [Signature]
Name Sara Myers
Title Executive Director

June 10, 2013⁴

By [Signature]
Name Stephanie S. James
Title President

"Foundation"

CITY OF LONG BEACH, a municipal corporation

C.L.B., 2013⁴

By [Signature] **Assistant City Manager**
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Amendment is approved as to form on June 11, 2013⁴.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

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