

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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AGREEMENT

30930

THIS AGREEMENT is made and entered in duplicate as of October 22,

2008 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 21, 2008, 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:

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 a sum not to exceed Five Hundred Forty Thousand Dollars (\$540,000.00) during the City's fiscal year 2008-2009 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 for the 2009 Smithsonian Week activities, in the amount of Two Hundred Forty Thousand Dollars (\$240,000.00); and (2) for grants in the amount of Three Hundred Thousand Dollars (\$300,000.00), as shown on Exhibit "B" attached hereto.

1 The organizations and artists shown on Exhibit "B" as receiving
2 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,
3 Level II", "Community Projects Grants", and "Neighborhood Project Grants" must
4 apply for support and successfully meet PCA's established criteria for support.
5 City shall pay \$540,000.00 to PCA in installments as follows: Three Hundred
6 Thousand Dollars (\$300,000.00) on City's execution of this Agreement and the
7 remaining amount of Two Hundred Forty Thousand Dollars (\$240,000.00) in
8 installments of Thirty Thousand Dollars (\$30,000.00) each on January 2, 2009,
9 February 2, 2009, March 2, 2009, April 2, 2009, May 2, 2009, June 2, 2009, July 2,
10 2009 and August 2, 2009.

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

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

25 4. On or before January 2, 2009, April 2, 2009, July 2, 2009 and
26 October 1, 2009, PCA shall submit to City a performance report of its activities, which
27 report shall include a statement of all arts and cultural groups and artists to whom funds
28 were distributed during the preceding three-month period and certification that each such

1 group or artist met the provisions of this Agreement. PCA shall require that the arts and
2 cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit
3 an interim and final report statement to PCA, setting forth the group's financial condition
4 and disclosure of all expenses, revenues, and fund balances relating to funds given to
5 said groups hereunder. These statements shall be prepared and submitted on a
6 schedule that will permit them to be reviewed by the City upon request.

7 5.

8 A. PCA shall prepare and file with City a complete annual
9 financial report no later than November 15, 2009, covering the period October 1,
10 2008 through September 30, 2009 and accounting for the Five Hundred Forty
11 Thousand (\$540,000.00) allocated to PCA under Section 2 hereof. At that time,
12 PCA shall return to City any revenues undistributed or unexpended by it on or prior
13 to September 30, 2009. Said financial report shall be certified by PCA's senior
14 executive officer to indicate that all expenditures are supported by receipts,
15 invoices, vouchers or other appropriate documentation and that such expenditures
16 were made in accordance with this Agreement. PCA shall maintain books,
17 financial records and files as necessary to support its certified financial
18 statements. The City Auditor and other appropriate City personnel shall have the
19 right to examine and audit the statements and supporting books, records and files
20 for three years following the expiration or sooner termination of this Agreement.

21 B. Notwithstanding anything to the contrary herein, the City
22 Manager may approve the retention by PCA of funds allocated to specific arts and
23 cultural groups and artists during 2008-2009 and not spent by September 30,
24 2009, so long as he finds that adequate progress and timely completion of the
25 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly
26 status reports on such projects and shall expedite completion in a form satisfactory
27 to the City Manager.

28 C. On or before October 30, 2009, PCA shall secure from each

1 arts and cultural group identified in Exhibit "B" a comprehensive annual financial
2 statement for the period October 1, 2008 through September 30, 2009. Said
3 financial statement shall be reviewed, audited and approved by each group's
4 board, and shall be forwarded to the City Manager, together with a copy of the
5 applicable report based on said review, or part of the annual financial statement.

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

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

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

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

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

24 11. PCA shall with respect to this Agreement indemnify and hold
25 harmless City, its officials, employees and agents (collectively in this Section "City") from
26 and against any and all liability, claims, demands, damage, loss, causes of action,
27 proceedings, penalties, costs and expenses (including reasonable attorney's fees, court
28 costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims

1 include by way of example but are not limited to: Claims for property damage, personal
2 injury or death arising in whole or in part from any negligent act or omission of PCA, its
3 officers, employees, agents, or anyone under PCA's control (collectively "Indemnitor");
4 PCA's breach of this Agreement; misrepresentation; willful misconduct; and Claims by
5 any employee of Indemnitor relating in any way to worker's compensation. Independent
6 of the duty to indemnify and as a free-standing duty on the part of PCA, PCA shall defend
7 the City and shall continue such defense until the Claim (including allegations in a Claim)
8 is resolved, whether by settlement, judgment or otherwise. No finding or judgment of
9 negligence, fault, breach, or the like on the part of Indemnitor shall be required for the
10 duty to defend to arise. PCA shall notify the City of any Claim within ten (10) days.
11 Likewise, the City shall notify PCA of any Claim, shall tender the defense of such Claim
12 to PCA, and shall assist PCA, as may be reasonably requested, in such defense.

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

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

28 (b) Workers' Compensation insurance as required by the Labor Code of

1 the State of California and employer's liability insurance in an amount not less than
2 One Million Dollars (\$1,000,000).

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

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

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

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

22 Prior to the start of performance, PCA shall deliver to City certificates of
23 insurance and required endorsements for approval as to sufficiency and form. The
24 certificate and endorsements for each insurance policy shall contain the original signature
25 of a person authorized by that insurer to bind coverage on its behalf. In addition, PCA,
26 shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to
27 City certificates of insurance and endorsements evidencing renewal of such insurance.
28 City reserves the right to require complete certified copies of all policies of PCA and

1 PCA's contractors and subcontractors, at any time. PCA shall make available to City's
2 Risk Manager or designee all books, records and other information relating to the
3 insurance coverage required herein, during normal business hours.

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

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

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

22 14. Any notice required hereunder or desired to be given by either party
23 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
24 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California
25 90802 Attn: City Manager and to PCA at the address first shown herein. Change of
26 address shall be given in the same manner as stated herein. Notice shall be deemed
27 given on the date deposited in the mail or on the date personal delivery is made,
28 whichever first occurs.

1 15. The term of this Agreement shall begin at 12:01 a.m. on October 1,
2 2008, and shall terminate at midnight on September 30, 2009. Either party may
3 terminate this Agreement by giving thirty (30) days prior notice to the other party. The
4 complete annual financial report required by Section 5 shall be filed no later than
5 November 15, 2008, and any revenues to be returned shall be returned at the time of
6 said filing, unless otherwise allocated, with the approval of the City Manager.

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

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

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

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

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

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

26 22. In the event that there is any legal proceeding between the parties to
27 enforce or interpret this Agreement or to protect or establish any rights or remedies
28 hereunder, the prevailing party shall be entitled to its costs and expenses, including

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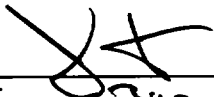
1 reasonable attorney's fees.

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

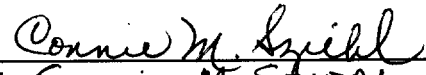
6 IN WITNESS WHEREOF, the parties hereto have executed this Agreement
7 with all formalities required by law as of the date first stated above.

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

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11 Dated: October 14, 2008

By: 
Name: David Prosser
Title: Board President

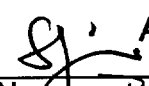
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14 Dated: OCTOBER 14, 2008

By: 
Name: CONNIE M. SIEGEL
Title: SECRETARY

"PCA"

CITY OF LONG BEACH, a municipal
corporation

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20 Dated: 10.23, 2008

By: 
Name: Patrick H. West
Title: City Manager

"City" EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

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24 This Agreement is approved as to form on 10/20, 2008.

ROBERT E. SHANNON, City Attorney

25
26
27 By 
Assistant

EXHIBIT A
PCA Operating Budget FY 2009: October 1, 2008 through September 30, 2009

	TOTAL BUDGET FY 2009		Admin.	Fundraising	Grants & Training	Marketing	Neighborhoods	Design/ Public Art	City Support	
Staff (+Other Consult)	193,987	193,987							193,987	Exec. Director; Finance Asst.; Receptionist
Percentage of total budget	14.27%	14.27%		0.00%	0.00%	0.00%	0.00%		14.27%	
Operations:										
Advocacy	1,500	1,500							-	
Audit/Legal Fees	15,000	8,000							7,000	Audit
Bank/Payroll Fees	2,196	2,196								
Equipment/Computers	24,000	20,000							4,000	Copier/computer lease
Fundraising	47,000			47,000						
Insurance	5,500	5,500							2,800	Property/Liability
Maintenance	5,750	5,750								
Memberships	2,000	2,000								
Meetings/Travel	5,000	5,000								
Outside Consultants	28,080	6,967							21,113	Accounting
Outside Staffing	-	-								
Postage	7,340	7,340							2,100	Postage
Printing	1,200	1,200								
Rent/Parking	15,000	8,000							7,000	Rent
Security	-	-								
Special Events Cost	95,225	-		95,225						
Supplies	4,820	4,820							2,000	Supplies
Telephone/Internet	6,000	6,000								
Reserve Fund	15,000	15,000								
Misc. (Licenses, etc)	100	100								
Total Operations	280,711	99,373		142,225	-	-	-	-	46,013	
Percentage of total budget	20.64%	7.31%		10.46%	0.00%	0.00%	0.00%	0.00%	3.38%	
Programs:										
Grants & Residencies	306,650				6,650				300,000	Grants Program
Marketing Projects	55,500					55,500				
Neighborhoods Programs	241,445						241,445			
Public Art	115,428							115,428		
Program Administration	166,087				66,562	40,872	58,653			
Program Total:	885,110	-		-	73,212	96,372	300,098	115,428	300,000	
Percentage of total budget	65.09%	0.00%		0.00%	5.38%	7.09%	22.07%	8.49%	22.06%	
TOTAL EXPENSES:	1,359,808	293,360		142,225	73,212	96,372	300,098	115,428	540,000	
Percentage of total budget		21.57%		10.46%	5.38%	7.09%	22.07%	8.49%	39.71%	

**2008-2009 GRANT AWARDS
EXHIBIT B**

	1st payment Nov. 1, 2008	2nd payment Feb. 15, 2009	3rd payment May 15, 2009	4th payment Oct. 15, 2009	Total Award
PROFESSIONAL ARTIIST FELLOWSHIP	100%	0%	0%	0%	Award
1 Shyamala Moorty	\$5,000				\$5,000
2 Slobodon Dimitrov	\$1,750				\$1,750
3 Hung Viet Tran	\$1,750				\$1,750
4 Sarah Vinci	\$1,500				\$1,500
	\$10,000				\$10,000

	25%	25%	25%	25%	Award
OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)					
1 Khmer Arts Academy	\$3,465	\$3,465	\$3,465	\$3,465	\$13,860
2 Long Beach Playhouse	\$3,416	\$3,417	\$3,417	\$3,417	\$13,667
3 Long Beach Opera	\$3,369	\$3,368	\$3,368	\$3,368	\$13,473
	\$10,250	\$10,250	\$10,250	\$10,250	\$41,000

	25%	25%	25%	25%	Award
OPERATING GRANTS, LEVEL II (budgets >\$1M)					
1 Long Beach Symphony Orchestra	\$10,682.61	\$10,682.61	\$10,682.60	\$10,682.60	\$42,730.42
2 Museum of Latin American Art	\$10,146.80	\$10,146.79	\$10,146.80	\$10,146.80	\$40,587.19
3 International City Theatre	\$9,510.53	\$9,510.53	\$9,510.53	\$9,510.53	\$38,042.12
4 Musical Theatre West	\$9,410.06	\$9,410.07	\$9,410.07	\$9,410.07	\$37,640.27
	\$39,750.00	\$39,750.00	\$39,750.00	\$39,750.00	\$159,000.00

	25%	25%	25%	25%	Award
COMMUNITY PROJECT GRANTS					
1 South Coast Dance Arts Alliance	\$1,500	\$1,500	\$1,500	\$1,500	\$6,000
2 Arts and Services for Disabled, Inc.	\$2,000	\$2,000	\$2,000	\$2,000	\$8,000
3 Homeland Cultural Center through Partners of Parks	\$1,250	\$1,250	\$1,250	\$1,250	\$5,000
4 The Found Theatre	\$875	\$875	\$875	\$875	\$3,500
5 Long Beach Community Concert Association	\$1,500	\$1,500	\$1,500	\$1,500	\$6,000
6 Earl Burn Miller Japanese Garden through CSULB Foundation	\$1,750	\$1,750	\$1,750	\$1,750	\$7,000
7 The Garage Theatre	\$1,750	\$1,750	\$1,750	\$1,750	\$7,000
8 Hmong Association of Long Beach	\$1,500	\$1,500	\$1,500	\$1,500	\$6,000
9 Jazz Angels	\$1,838	\$1,838	\$1,838	\$1,839	\$7,353
10 South Coast Chorale	\$1,875	\$1,875	\$1,875	\$1,875	\$7,500
11 Historical Society of Long Beach	\$912	\$912	\$912	\$911	\$3,647
12 2nd Saturday Art Walk	\$750	\$750	\$750	\$750	\$3,000
	\$17,500.00	\$17,500	\$17,500	\$17,500	\$70,000

	75%	0%	0%	25%	Award
NEIGHBORHOOD PROJECT GRANTS					
1 Primetime Players	\$1,425.00			\$475.00	\$1,900
2 Bethune Theatredanse	\$1,688.00			\$562.00	\$2,250
3 Marguerite Keifer Education Center	\$900.00			\$300.00	\$1,200
4 California Pools of Hope	\$1,800.00			\$600.00	\$2,400
5 The Living Love Foundation	\$1,575.00			\$525.00	\$2,100
6 CityMuse	\$919.00			\$306.00	\$1,225
7 Rogue Artists Ensemble	\$1,462.00			\$488.00	\$1,950
8 Institute of Art, Music & Science	\$1,218.00			\$407.00	\$1,625
9 Alive Theatre	\$1,238.00			\$412.00	\$1,650
10 Long Beach Museum of Art	\$1,238.00			\$412.00	\$1,650
11 First Congregational Church	\$562.00			\$188.00	\$750
12 Friends of Rancho Los Cerritos	\$975.00			\$325.00	\$1,300
	\$15,000.00			\$5,000.00	\$20,000

GRAND TOTALS \$92,500 \$67,500 \$67,500 \$72,500 \$300,000