



Project Name: LTS 2023 - City of Long Beach

36639

GRANT AGREEMENT

THIS GRANT AGREEMENT is made and entered into by and between the **LA84 FOUNDATION** (the "Foundation") and **City of Long Beach – Parks, Recreation and Marine** (the "Grantee").

RECITALS

A. The Foundation, a California nonprofit public benefit corporation, is organized for the purpose of aiding and assisting, through contributions and otherwise, amateur sports programs, primarily for youth, in the Southern California area and desires to make a grant to the Grantee in furtherance of that purpose.

B. The Grantee is willing to accept such grant on the terms and conditions of this Agreement.

TERMS & CONDITIONS

In consideration of the facts recited above and the mutual covenants, conditions and representations set forth herein, the parties agree, and covenant as follows:

1. Grant. Subject to the provisions of this Agreement, the Foundation hereby agrees to grant the sum of not more than **\$15,000** (the "Grant") to the Grantee for the purposes set forth on Schedule A attached hereto. If the Grant is payable over more than one year, notwithstanding any other statements in the Agreement or any Schedules thereto to the contrary, all funding for years subsequent to the initial year's funding are provisional awards to be awarded at the Foundation's sole and absolute discretion and are also contingent upon (a) approval by the Foundation's President and CEO; (b) availability of the funds; (c) receipt of satisfactory annual narrative and financial reports; and (d) receipt of satisfactory budgets and plans for the subsequent years' activities. The Foundation shall have no obligation, to segregate or set aside any funds or assets for the payment of the Grant. Operational implementation of the Grant is the sole responsibility of the Grantee. Other than payment of the grant award, it is expressly understood that the Foundation has no obligation to provide other or additional support for this or any other project or purposes. The Grantee shall use the Grant solely for the purposes, and for organizing, implementing, and conducting the program (the "Program"), set forth on Schedule A attached hereto. Notwithstanding any other provision of this Agreement, the Grant shall be used only for charitable and educational purposes qualifying under Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), and neither the Grant nor the income therefrom may be used for purposes other than those so described. Subject to the provisions of Paragraphs 3 and 8 herein, the Grant shall be payable as set forth on Schedule B attached hereto. The Grantee covenants that it will hold all unexpended amounts of the Grant in interest-bearing bank accounts with the bank or banks set forth on Exhibit B attached hereto. **The Grant will commence on date of board approval April 4, 2023 and conclude on August 31, 2023.**

2. Program. As an inducement to the Foundation to make the Grant, the Grantee has previously submitted a written proposal (the "Proposal") to the Foundation, which Proposal includes a description of the Program. The Grantee acknowledges that the Grant is expressly made in reliance on the Proposal and a review of financial information and a final budget submitted by the Grantee. Accordingly, the Grantee shall notify the Foundation immediately, in writing, of any material change in the facts set forth in the Proposal or in any other information or document submitted to the Foundation. Without the advance written consent of the Foundation, the Grantee shall not expend any part of the Grant or interest thereon whether for any purpose or item in excess of the amount budgeted for such purpose or item on the final budget for the Program submitted by the Grantee to the Foundation.

3. Conditions to Grant. Except as such conditions may be waived in writing by the Foundation, the Foundation's obligations to make the Grant and, if the Grant is payable in installments, to pay each installment thereof shall be subject to each of the following conditions:

(a) All necessary approvals and consents to the payment of the Grant shall, to the satisfaction of the Foundation, have been obtained and not revoked.

(b) No legal, administrative, or other proceeding shall be pending that questions the legality of the Grant.

(c) The conditions set forth on Schedule C attached hereto shall have been fully satisfied.

4. Covenants of Grantee. The Grantee covenants with the Foundation as follows:

(a) To repay any portion of the Grant which is not used for the purposes of the Grant.

(b) To submit to the Foundation full and complete at least periodic reports, not less frequently than annual, on the manner in which the Grant is spent and the progress made in accomplishing the purposes of the Grant.

(c) To maintain records of receipts and expenditures and to make its books and records relating to the Grant available to the Foundation at reasonable times.

(d) Not to use any of the Grant (i) to carry on propaganda, or otherwise to attempt, to influence legislation (within the meaning of Section 4945(d)(1) of the Code), (ii) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code), (iii) to make any grant which does not comply with the requirements of Section 4945(d)(3) or (4) of the Code or (iv) to undertake any activity for any purpose other than one specified in Section 170(c)(2)(B) of the Code.

(e) In the performance of this Agreement, the expenditure of the Grant and the organization, implementation and conduct of the Program (i) to comply with all applicable laws, regulations and union agreements to which it is bound and (ii) not to discriminate on the basis of race, color, national origin, age, sex, sexual orientation, marital status, creed, religion, citizenship, ancestry or political affiliation.

(f) Without the prior written approval of the Foundation, and except for salaries specifically identified in the Proposal, not to transfer or pay, whether or not for value, any portion of the Grant to (i) any person or entity who directly or indirectly controls, is controlled by or is under common control with the Grantee, (ii) any person or entity who is an officer, employee, partner or trustee of, or serves in a similar capacity with respect to, the Grantee or (iii) any person or entity of which the Grantee or any of its officers, employees, partners or trustees is the beneficial owner of 5% or more of the equity interests therein.

(g) If the Grantee discovers that any of the Representations made by it in Section 5 below were not correct or should any facts change such that any of the representations made are no longer accurate, to provide the Foundation immediate written notice of the same.

(h) If any losses, injuries, or damages are sustained by or to any person or property, relating to the program being funded under this Agreement, to immediately notify the Foundation in writing regarding the same.

5. Representations of Grantee. The Grantee represents and warrants to the Foundation that:

(a) The Grantee is exempt from federal income tax under IRS Section 501(c)(3) and it is not a private foundation as defined in IRS Section 509(a). The Grantee further represents and warrants that (a) the facts supporting the Grantee's tax-exempt and public charity status under IRS Sections 501(c)(3) and 509(a) have not changed since the issuance of its IRS determination letter, (b) it is not aware of any facts which could result in a change in its tax-exempt and public charity status under IRS Sections 501(c)(3) or 509(a) or relevant state law, or the imposition of excise taxes under IRS Section 4958 dealing with "intermediate sanctions," (c) the receipt of the grant funds will not change the Grantee's public charity status under IRS Section 509(a) and (d) that the Grantee does not support or conduct, directly or indirectly, violence or terrorist activities of any kind. Such representations and warranties shall continue through the completion date of this Grant.

(b) This Agreement has been duly authorized, executed and delivered by the Grantee, and constitutes a legal, valid, and binding obligation of the Grantee for the benefit of the Foundation.

(c) All proceedings legally required to be taken by the Grantee in connection with the authorization of this Agreement and of the transactions related thereto, and all approvals, authorizations, consents and other orders of public boards or bodies as may be legally required to be obtained by the Grantee prior to the date hereof with respect to all or any of such matters, have been taken or obtained.

(d) The execution and delivery of this Agreement by the Grantee, and the performance by the Grantee of its obligations hereunder, do not (i) violate any provisions of the Articles of Incorporation, Bylaws or other governing instrument of the Grantee, (ii) violate any law, rule or regulation having applicability to the Grantee or any order, writ, judgment, decree, determination or award to which the Grantee is a party or (iii) result in the breach of or constitute a default under any agreement, lease or instrument to which the Grantee is a party or by which the Grantee is bound.

(e) No audit, investigation, proceeding or other inquiry is pending by the Internal Revenue Service, the Franchise Tax Board or the Attorney General of any state with respect to the Grantee or any affiliated organization, and no legal, administrative or other proceeding is

pending that questions the legality of the Grant, except as is disclosed on Schedule C attached hereto.

(f) Grantee acknowledges that it has a written policy that addresses its commitment to keep children safe from sexual abuse by preventing, recognizing, and responding to situations both on and off the playing field that in any way compromises their safety.

6. Publicity. Grantee agrees to use its best efforts to promote its grantee/grantor relationship with the Foundation through social media platforms including, but not limited to, Facebook, Twitter, and YouTube. Grantee agrees to provide name and email of organization's board members and key staff. The Foundation will only use this information to communicate about its activities and will not share this information with others. All promotional and advertising materials, including announcements, brochures, publications, films, videotapes, exhibitions and visual materials, produced or authorized by the Grantee relating to the Program shall, to the extent directed by the Foundation, give credit to the Foundation at least as prominent as that given any other person, organization or entity which makes a grant or contribution of funds to the Grantee. The Foundation shall have the right, but not the obligation, to review in advance and approve the contents of all press announcements issued by the Grantee, the planning of all press events, and the contents of all promotional and advertising materials relating to the Grant and the Program. The Foundation may, in its discretion, also publish and distribute promotional materials relating to the Program and the Grant. The publication of such materials may include, but not be limited to, the Foundation's website and social media (e.g. Facebook and Twitter). The Grantee shall have no right to use any symbol, logo, trade name or trademark of the Foundation without the Foundation's advance written consent.

7. Reports and Records. The Grantee agrees to submit such reports, in addition to the reports required under Paragraph 4(b) hereof, as may be requested by the Foundation, in such form as the Foundation may prescribe at reasonable intervals, relating to the Grantee's performance of or ability to fulfill its obligations under this Agreement. Notwithstanding the foregoing, the Grantee shall timely submit such reports as are described on Schedule D attached hereto. The Grantee shall maintain complete, accurate, and current records of all income and expenses relating to the Program and the Grant. During the term of this Agreement and at any time within five (5) years thereafter, the Grantee shall maintain and make such records available upon request to the Foundation for review, copying and audit. In addition, the Grantee agrees to cooperate fully with the Foundation, and to allow the Foundation and any person designated by it full and complete access to the facilities, activities and operations of the Grantee, for the purpose of auditing, monitoring and evaluating the Program, the Grant and the compliance of the Grantee with the terms and conditions of this Agreement.

8. Termination. The Foundation shall have the right to terminate this Agreement and the Grant at its sole and absolute discretion, with or without cause. Upon termination of this Agreement by the Foundation, the Foundation shall be relieved from making any further payments to the Grantee in regard to the Grant. In the event the termination is pursuant to a determination by the Foundation that the Grantee (a) has misrepresented any material fact or supplied false or misleading material information to the Foundation in the Proposal or otherwise in regard to this Agreement or the Grant, (b) has diverted any payments made under this Agreement to a purpose other than that permitted hereunder, (c) has failed to maintain or provide any material records or reports required to be maintained or provided hereunder or (d) has terminated, abandoned, cancelled or substantially altered, or is likely to terminate, abandon, cancel or substantially alter, the Program, the Foundation may require the Grantee to refund any or all payments of the Grant heretofore made. The foregoing remedies of the Foundation are in addition to any other remedies provided by law, and all such remedies shall be cumulative and not exclusive.

9. No Liability. The Grantee shall, to the fullest extent permitted by law, indemnify, defend and hold the Foundation (along with its officers, directors, employees and agents) harmless from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of the Grantee, its employees, or agents, in any manner arising out of or incident to the performance of this Agreement or the planning, arranging, implementing, sponsoring or conducting of the Program or any other program or activity by the Grantee. **IN NO CASE SHALL THE FOUNDATION BE LIABLE TO THE GRANTEE OR ANY THIRD PARTY FOR CONSEQUENTIAL DAMAGES.** The Foundation shall have no liability for any debts, liabilities, deficits or cost overruns of the Grantee. It is expressly understood by the parties that no director, member, officer, employee or other representative of the Foundation shall incur any financial responsibility or liability of any kind or nature whatsoever in connection with this Agreement or any subsequent agreement between the parties regarding the subject matter hereof. The parties agree that the liability of the Foundation hereunder shall be limited to the payment of the Grant pursuant to the terms and conditions of this Agreement. Any contracts entered into or other obligations or liabilities incurred by the Grantee in connection with the Program or otherwise relating to this Agreement shall be the sole responsibility of the Grantee, and the Foundation shall have no obligation or liability whatsoever thereunder or with respect thereto. The Grantee covenants that all contracts to which it shall become a party in regard to the Program and/or the Grant shall include the following clause:

"It is expressly agreed and understood that neither the LA84 Foundation (the "Foundation") nor any director, member, officer, employee or other representative of the Foundation shall incur any financial responsibility or liability of any kind or nature whatsoever in connection with this Agreement, and that the foregoing provisions concerning financial responsibility or liability shall be expressly included in and made a part of any and all agreements between the parties subsequent to this Agreement."

10. Insurance. The Grantee represents and warrants that (a) it is, and will continue to be, adequately insured against all risks, including such risks as would be covered by fire and property damage, worker's compensation, automobile and comprehensive general liability insurance, and professional liability with respect to the conduct of the Program and all other programs and activities of the Grantee and (b) the premises and facilities of third parties where the Grantee conducts and will conduct its programs and activities also are and will be so adequately insured, except as expressly set forth on Schedule C attached hereto. Exhibit C shall serve as applicable insurance and additional insurance provisions that the Grantee shall provide to LA 84 Foundation. As constituted by this agreement, the Grantee shall furnish the Fund the policy or policies of insurance or applicable certificate of insurance or either written evidence satisfactory to the Fund, evidencing the insurance carried by or otherwise benefiting the Grantee the requirements set forth in exhibit C. The Grantee covenants that it will cause the Fund to be added as an additional insured on all policies of insurance carried by the Grantee.

11. Other Provisions. This Agreement and the Proposal together constitute the entire agreement of the parties with respect to the subject matter hereof, and the provisions hereof and thereof have superseded any and all prior and contemporaneous agreements or understandings relating to the matters specifically addressed herein or therein. Failure or inability of either party to enforce any right hereunder shall not waive any right with respect to any other or future rights or occurrences, nor shall waiver of any condition or right in any instance be deemed a waiver of any condition or right in any other instance. If any legal action or other proceeding is brought for the

enforcement of this Agreement, or because of an alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such action or proceeding in addition to any other relief to which it may be entitled. This Agreement and the Grantee's rights, duties and obligations hereunder may not be assigned by the Grantee without the prior written consent of the Foundation. Any attempt at assignment shall be void and a material breach of this Agreement by the Grantee. This Agreement has been negotiated, executed, and delivered and will be performed in the State of California and shall be governed by and construed in accordance with its laws. The Schedules attached hereto are incorporated herein by reference and made a part of this Agreement as if fully set forth herein.

12. Amendments and Modifications. This Agreement may be amended or modified only by a written instrument executed by the Foundation and by the Grantee. Notwithstanding the foregoing, modifications to the scope of the Program, alterations in the funding schedule, revisions to the Proposal and other changes to the terms and conditions of this Agreement set forth on the Schedules attached hereto may be effectuated by the substitution of replacement Schedule(s), provided that such replacement Schedule(s) are executed by both the Foundation and the Grantee.

13. Survival. The obligations set forth in Sections 7, 9, 11, 14, 15 and 16 shall survive the termination of this Agreement.

14. Notice. All notices, requests or consents required or permitted under this Agreement shall be in writing and shall be given to the other party by personal delivery, overnight delivery, or regular certified mail, sent to such party's address as is set forth below such party's signature hereto or to any other address as any party to whom notice is to be given may have previously furnished to the other as set forth in this provision. Each such notice, request or consent shall be deemed effective upon receipt.

15. Independent Contractor. The Grantee is an independent contractor, and nothing herein shall be construed to create an employment, joint employment, partnership, joint venture, agency, or any other kind of relationship between Grantee and the Foundation. In no event shall the Grantee or its employees, independent contractors, or agents, if any, be considered employees of the Foundation. The Grantee shall not have, nor shall the Grantee claim or imply that the Grantee has, any authority to enter into any obligation on behalf of, or binding upon, the Foundation. The Grantee is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including, but not limited to, workers' compensation insurance. The Grantee and its employees are not eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan, of the Foundation.

16. Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such ".pdf" signature page were an original thereof.

17. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before an experienced arbitrator

licensed to practice law in California in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Association") in Los Angeles, California. The arbitration decision shall be final and binding upon the parties and may be entered as a judgement in any court of competent jurisdiction. In addition to the aware of any other remedy or relief, the prevailing party in any such arbitration proceeding shall be entitled to his or its reasonable attorneys' fees and costs (including, without limitation, arbitrators' fees, Association fees and related fees) incurred in connection with such proceeding.

IN WITNESS WHEREOF, the parties have executed this Grant Agreement on August 2, 2023.

GRANTEE:
City of Long Beach
Parks, Recreation and Marine
411 West Ocean Boulevard
Long Beach, CA 90802

FOUNDATION:
LA84 FOUNDATION
2141 West Adams Blvd.
Los Angeles, CA 90018

BY: *Hinda J. Sakuma*
City Manager
Thomas B. Modica

BY: *[Signature]*
Renata Simril
President & CEO

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

Approved as to form:
Date: 7/7/2023
By: *[Signature]*
For: Dawn McIntosh, City Attorney

SCHEDULE A

DESCRIPTION OF PROGRAM AND PURPOSES:

The purpose of this Grant to City of Long Beach – Parks, Recreation and Marine is to support scholarships.

The program description and budget are attached hereto and incorporated herein by this reference.

GRANT TITLE: LTS 2023 - City of Long Beach
NAME OF ORGANIZATION: City of Long Beach – Parks, Recreation and Marine
AMOUNT AWARDED: \$15,000

PROGRAM DESCRIPTION:

The Learn to Swim program is delivered over approximately eight weeks at three pools. As a result of funding, 300 youth will benefit with two scholarships each.

BUDGET SUMMARY

Scholarships:	\$15,000
TOTAL:	\$15,000

SCHEDULE B

The funding schedule set forth below constitutes an estimate of the Grantee's need for funds based upon the Proposal. The amounts and timing of the payment of installments of the Grant as set forth in such funding schedule are subject to change, in the discretion of the Foundation, in the following circumstances:

1. Reports required by Paragraph 7 of the Grant Agreement and/or by Schedule D attached thereto are not submitted in a timely manner or with all required information.
2. The Program is modified, enhanced, reduced or otherwise altered in any substantive manner without the prior written approval of the Foundation.
3. The Foundation determines that cost savings may be achieved through utilization of other resources or the Foundation's purchase requisition procedures for equipment and other items required by the Program.
4. The Grant is terminated pursuant to Paragraph 8 of the Grant Agreement.

FUNDING SCHEDULE:

Amount	Date
\$15,000	Upon Grant Execution

* An initial advance payment can be made at the discretion of Foundation Staff in consultation with grantee. Subsequent payments will be made after the grantee submission of Progress Reports to be reviewed and approved by Foundation prior to payment authorizations. The total grant funds released based on Grantee submitted Progress Reports may be less than the approved grant, but in no case shall the total payment exceed \$15,000.

BANK(S) IN WHICH GRANT FUNDS ARE TO BE HELD:

ACCOUNT #:N/A

BANK NAME AND ADDRESS:

N/A

MAIL CHECK TO:

City of Long Beach
c/o Mrs. Caitlynn Cruz, Aquatics Supervisor II
2760 Studebaker Rd. Long Beach, CA 90815

SCHEDULE C

ADDITIONAL CONDITIONS PRECEDENT TO GRANT:

INSURANCE REQUIREMENTS GRANT

Grantee shall furnish the foundation with the following:

Coverage shall be at least as broad as:

Commercial General Liability Coverage

- Insurance Services Office (occurrence form CG 0001).
- Minimum Limits: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for bodily injury, personal injury, and property damage. Coverage shall include abuse and molestation coverage with minimum limits of \$1,000,000 per occurrence / \$2,000,000.

Commercial Professional Liability / Social Services Professional Coverage

- Minimum Limits: \$1,000,000 per occurrence/\$2,000,000 policy aggregate.

Worker's Compensation

- Worker's Compensation as required by California law and Employer's Liability coverage.
- Minimum Limits: Employer's Liability \$1,000,000 per accident for bodily injury or disease.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- LA84 Foundation, its officers, directors and employees, are to be covered as additional insureds with respect to liability arising out of grantee operations
- Insurance shall be primary insurance as respects LA84 Foundation, its officers, directors, and employees.
- For any claims the Grantee's insurance shall waive all rights of subrogation against any policy held by LA84 Foundation, its officers, directors, and employees.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice has been given to LA84 Foundation
- An Additional Insured endorsement is to be provided on the Automobile Liability insurance (using ISO form CA 2048 or insurance company equivalent).

Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A VI.

Verification of Coverage

The Grantee shall furnish LA84 Foundation with original certificates and amendatory endorsements effecting coverage, additional insured status and limits required by this clause. An additional insured endorsement, Insurance Services Office form CG2026, or insurance company equivalent, shall be attached to the certificate of general liability insurance.

All certificates and endorsements are to be received and approved by LA84 Foundation before Grantee will receive support. The LA84 Foundation reserves the right to require complete, certified copies of all insurance policies, including endorsements effecting the coverage required by these specifications at any time.

PENDING LITIGATION AND OTHER PROCEEDINGS:

Grantee warrants that there is no pending litigation or other proceedings.

UNINSURED RISKS:

Grantee further represents and warrants that there are no uninsured risks the occurrence of which would have a material adverse effect on the program.

SCHEDULE D

REPORTS TO BE FURNISHED:

Final Report Narrative and Expense Report	9/29/2023
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** Final Report must be a complete review and report of the program including all statistical data, evaluation results and a detailed accounting of grant expenditures. Final Report forms are available on the Foundation grantee portal (www.grantinterface.com/home/logon). Failure to submit a final report will impact the organization's ability to obtain a grant in the future.

SCHEDULE E

OTHER TERMS AND CONDITIONS:

The LA84 Foundation shall have the right to approve all publicity in advance of publication and Grantee shall submit to the Foundation any proposed materials for approval prior to their release.

All temporary or permanent signage shall be recommended and approved by Foundation. Foundation and Grantee shall mutually agree on proper name recognition for Foundation on equipment purchased with grant funds.

The Foundation may, in its discretion, also publish and distribute promotional materials relating to the Program and the Grant. The publication of such materials may include, but not be limited to, the Foundation's website and social media tools (e.g., Facebook and Twitter).

Grantee shall participate in the Foundation's Coaching Program by making arrangements with the Foundation for the Grantee's coaches to attend a coaching workshop. Arrangements by Grantee shall be coordinated with Foundation prior to the beginning of each sport season and is a requirement prior to the release of second payment.