



34420

Grant No. 23506

**NON-CAPITAL
GRANT AGREEMENT**

THIS GRANT AGREEMENT is made and entered into by and between the **LA84 FOUNDATION** (the "Foundation") and **CITY OF LONG BEACH** (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 **\$25,000** (the "Grant") to the Grantee for the purposes set forth on Schedule A attached hereto. The Foundation shall have no obligation, however, to segregate or set aside any funds or assets for the payment of the Grant. 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~~ ^{Schedule} attached hereto. The Grant will commence at the signing of this agreement and conclude ~~September 30, 2016.~~

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.

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

(a) The Grantee is a municipal corporation acting through its Department of Parks, Recreation & Marine, located at **2760 Studebaker Road Long Beach 90815**, duly formed, validly existing and in good standing under the laws of the State of California, and has the legal power and authority to conduct its business, to own its properties and to execute and deliver, and to perform its obligations under, this Agreement.

(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 adopted written strategies to prevent child sexual abuse that are substantially similar to the strategies recommended by the Centers for Disease Control and Prevention in its publication "Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures" (Saul J, Audage NC. 2007), a copy of which can be obtained here: <http://www.la84.org/resource-guide-on-preventing-child-sexual-abuse-in-youth-sports>.

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, including all social media posts. 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 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 indemnify, defend and hold the Foundation harmless from and against any and all liability to any third party for or from loss, damage or injury to persons or property 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, 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. Upon demand of the Foundation, the Grantee shall furnish the Foundation the policy or policies of insurance or a certificate of insurance or either written evidence satisfactory to the Foundation, evidencing the insurance carried by or otherwise benefiting the Grantee. The Grantee covenants that it will cause the Foundation 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. Termination of Grant. The Grantee covenants to execute and deliver to the Foundation a termination letter in the form attached hereto as Exhibit "1" upon completion of the program.

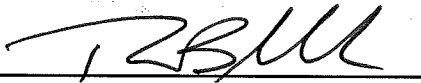
IN WITNESS WHEREOF, the parties have executed this Grant Agreement on September 13, 2016.

GRANTEE:

CITY OF LONG BEACH

Assistant City Manager

BY:

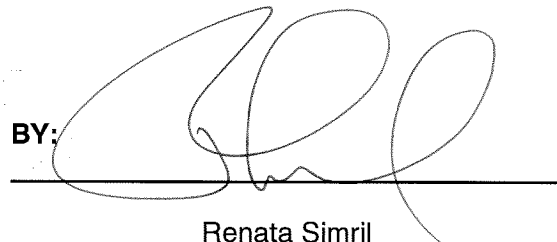


Patrick H. West, City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

FOUNDATION:

LA84 FOUNDATION

BY:



Renata Simril
President/CEO

APPROVED AS TO FORM

Aug 16, 2016
CHARLES PARKIN, City Attorney

By



DEPUTY CITY ATTORNEY

SCHEDULE A

DESCRIPTION OF PROGRAM AND PURPOSES:

The purpose of this Grant to City of Long for SUMMER SWIM 2015 is to augment the City of Long Beach existing Learn-to-Swim program and beginning competitive swimming program at five (5) pools. In addition, the City of Long Beach participate in the synchronized swimming and dive program(s) and the water polo league. The grant will provide equipment and training necessary for the program. The goal of SUMMER SWIM 2016 is to reach 690 unduplicated youth, ages 7-17. As a competitive component for SUMMER SWIM 2015, qualified participants will be able to compete in any one of the following competitions: Summer Swim Festival, Water Polo, Synchronized Swimming and the Summer Diving Festivals.

The LA84 Foundation Summer Aquatics program's priority areas for 2016 are to:

- (1) Increase the number of youth that are water safe and learn to swim. Agencies must track swimmer's progress using the American Red Cross 'Learn to Swim' program levels or an equivalent rubric.
- (1) Increase girls participation in all LA84 Foundation funded aquatics sports offered by your agency
- (2) Decrease the number of drop-offs and no-shows at each of the four culminating Summer Aquatics events.

All participating coaches must go through the Foundation's coaching education program. New coaches must complete the LA84 Foundation's Art of Coaching course and returning coaches must complete a coaching course provided by our partner organization, the Positive Coaching Alliance. Coaches involved in diving, synchronized swimming or water polo must attend the sport specific clinics. All participating agencies are required to complete a final report.

The proposal and budget attached hereto is incorporated herein by this reference. The term of this Grant will commence at the signing of this agreement and conclude September 30, 2016.

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:

<u>Amount</u>	<u>Date</u>
\$12,418.27 (50%)	Upon Grant Execution
\$12,418.26 (50%)	October 15, 2016

The additional \$163.47 are funds that benefit the City of Long Beach - Parks, Recreation and Marine and is a direct payment for T-shirts and equipment made to vendors by the Foundation, bringing the grant total to an amount up to \$25,000.00.

MAIL CHECK TO:

ATTN:
City of Long Beach
Attn: Todd Leland
2760 Studebaker Road
Long Beach, CA 90815

SCHEDULE C

ADDITIONAL CONDITIONS PRECEDENT TO GRANT:

Pursuant to the provisions of Section 10, Terms and Conditions and Schedule C, Additional Conditions Precedent to Grant, of the Grant Agreement between the LA84 Foundation and the City of Long Beach, hereby agrees to:

1. Waive all claims and recourse against the Foundation including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this agreement except claims arising from the concurrent or sole negligence of the Foundation, its officers, agents and employees.
2. Indemnify, hold harmless and defend the Foundation, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the performance of the Program except for liability arising out of the concurrent or sole negligence of the Foundation, its officers, agents or employees.
3. The Foundation shall be named as an additional insured on the Grantee's liability insurance policy and provide Foundation with a certificate of insurance.
4. At the option of the City, such insurance may be provided through self-insurance and the Foundation will accept the City's certificate of self-insurance as evidence of such coverage.

SCHEDULE D

REPORTS TO BE FURNISHED:

- I. PROGRESS REPORTS*
 - A. Interim Progress Reports due:
 July 15, 2016
- II. FINAL REPORT**
 - A. Final Report due:
 September 9, 2016

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- * Progress Reports must include, at a minimum, a written narrative addressing the progress of all phases of program development and a detailed accounting of expenditures to date and any available statistics or evaluative data on the program. Progress Report forms will be supplied.
 - ** Final Report must be a complete review and report of the program including all statistical data, evaluation results expenditures.

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.

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.

SAMPLE

EXHIBIT "1"
Termination Letter -- Non-Capital Grant Agreement

Nolan Ortiz
LA84 Foundation
2141 West Adams Blvd.
Los Angeles, CA 90018

Re: Grant #: **23506**

Dear Sir or Madam:

This letter has reference to that certain Grant Agreement [the "Grant Agreement"] and any modifications or alterations thereto dated (insert date) between the LA84 Foundation (the "Foundation") and the Organization Name (the "Grantee"). Capitalized terms used herein without further definition have the meanings specified in the Grant Agreement.

In consideration of the payment by the Foundation of the final installment of the Grant under the Grant Agreement:

1. The Grantee hereby reaffirms all of its executory obligations and duties under the Grant Agreement, including, but not limited to, its obligation to indemnify, defend and hold the Foundation harmless from liabilities and losses pursuant to Paragraph 9 of the Grant Agreement, without setoff or other defense.

2. The Grantee represents and warrants that, in the performance of the Grant Agreement and in the planning, arrangement, implementation, sponsoring and conduct of the program, no losses, injuries or damages were sustained by or to any person or property that have not been reported in writing to the Foundation.

3. The Grantee represents and warrants (a) that no audit, investigation, proceeding or other inquiry is pending by the internal Revenue Service, the Franchise Tax Board, the Attorney General of any state or any other governmental agency with respect to the Grantee or any affiliated organization and (b) that no legal, administrative or other proceeding is pending that concerns the Grant or the Program.

4. The Grantee acknowledges and confirms (a) that, upon payment of the final installment of the Grant, the Foundation has no further duty or obligation to the Grantee and (b) that no officer, director, employee or other representative of the Foundation had made any statement, representation or warranty that the Grant will be renewed or extended.

5. The Grantee represents and warrants that all promotional and advertising materials produced or authorized by the Grantee relating to the Program have given appropriate credit to the Foundation as required by the Grant Agreement. The Grantee confirms that all future promotional and advertising material produced or authorized by the Grantee relating to the Program will give appropriate credit to the Foundation as required by the Grant Agreement.

6. The Grantee represents and warrants that all contracts to which it has become a party in regard to the Program and/or the Grant are listed on Annex A attached hereto and include the language required by Paragraph 9 of the Grant Agreement.

7. The Grantee represents and warrants that the Grant has been expended solely for the purposes set forth in the Grant Agreement.

8. The Grantee agrees to repay any portion of the Grant which is not used for the purposes set forth in the Grant Agreement.

The Foundation shall be entitled to rely on the foregoing representations, warranties, confirmations, acknowledgments and agreements in disbursing the final installment of the Grant.

Sincerely yours,

City of Long Beach

Executed by: _____

Title: _____

Date: _____