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**AGREEMENT**

**TO CONTINUE THE**

**GROW LONG BEACH FUND**

**BY AND BETWEEN**

**CITY OF LONG BEACH, AND**

**GROW AMERICA FUND, INC.**

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**THIS AGREEMENT TO CONTINUE THE GROW LONG BEACH FUND** (hereinafter referred as the "Agreement") is entered into as of the 1st day of October, 2013 by and between the City of Long Beach, a municipal corporation with principal offices at 333 W. Ocean Blvd., 13<sup>th</sup> Floor, Long Beach, California, 90802 (hereinafter referred to as the "Client") and the Grow America Fund, Inc., a not-for-profit corporation organized and existing under the laws of the State of Delaware and having its principal office at 708 Third Avenue, Suite 710, New York, New York, 10017 (hereinafter referred to as "GAF").

**WITNESSETH:**

**WHEREAS**, the Client and GAF have previously executed a Participation Agreement dated November 21, 1997 ("Participation Agreement") which, among other things, established the Grow Long Beach Fund; and

**WHEREAS**, the Client and GAF wish to replace the Participation Agreement but continue to operate and maintain the loan fund created thereby; and

**WHEREAS**, the Client desires to expand economic opportunity for residents of Long Beach so that these residents may become economically self-sufficient; and

**WHEREAS**, the Client desires to encourage sustainable community and economic development activities so that various neighborhoods in its geography are enabled to revitalize themselves; and

**WHEREAS**, the Client desires to continue operations of a community loan program for small business financing known as the Grow Long Beach Fund (the "Loan Program") to achieve these goals; and

**WHEREAS**, GAF is recognized and certified by the U.S. Treasury Department as a Community Development Financial Institution ("CDFI") and Community Development Entity ("CDE") as a domestic corporation having a primary mission of serving or providing investment capital for low income communities or low income persons; and

**WHEREAS**, GAF, a U.S. Small Business Administration (“SBA”) licensed and regulated Small Business Lending Company (hereinafter “SBLC”) is entitled to make SBA guaranteed loans to eligible small businesses, and is the nation's only SBLC devoted solely to economic and community development financing; and

**WHEREAS**, the National Development Council, a 501(c)(3) not-for-profit corporation (“NDC”) and GAF’s parent corporation, has executed an Agreement for Consulting Services with the Client in connection with this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained the parties hereto, intending to be legally bound, hereby agree as follows:

**A. GENERAL PROVISIONS AND RESPONSIBILITIES**

1. This Agreement hereby supersedes in its entirety the Participation Agreement, which shall have no further force or effect.
2. The Loan Program has been capitalized with funds provided by the Client (as described in Section C below). These funds will be used solely for loans within the areas identified by the Client, as listed in the attached Exhibit 1, which are sponsored by the Client and which meet the purposes of the Loan Program, as determined by the Client.
3. GAF will use its SBLC license to make SBA guaranteed loans sponsored by the Client and operate the Loan Program with direction from the Client’s management to operate the fund in a prudent and businesslike manner.

Staff provided by GAF will perform the following services:

- a. Market the Loan Program
  - b. Originate and package loans
  - c. Underwrite all loans
  - d. Obtain GAF and SBA approvals
  - e. Close, service, and collect loans
  - f. Perform appropriate periodic reviews of each loan
  - g. Provide reporting as required by the Client in a form acceptable to Client. (The parties agree that the acceptable form and format for this documentation is the complete GAF quarterly portfolio status report to the Client and the loan report for each Loan Program borrower including selected relevant information as provided by the borrower.)
4. GAF has a fiduciary responsibility to underwrite, approve, close, and service all program loans, and otherwise operate the Loan Program in a prudent and businesslike fashion. In addition, the SBA requires all SBLC's to follow SBA regulations and to use SBA documents and procedures in making and servicing loans. These fiduciary responsibilities and SBA regulations cannot be delegated or waived and they are hereby incorporated by reference into this Agreement.

**B. COMMENCEMENT, DURATION, COMPENSATION**

1. GAF shall continue providing services for Client as of the date of this Agreement and except as noted in Section E below, until October 1, 2017.
2. This Agreement shall remain in force through September 30, 2017. GAF and NDC will endeavor to build the portfolio to \$5,000,000 outstanding.
3. No party to this Agreement may terminate the Client's Investment Period earlier than October 1, 2015.
4. As full compensation for services provided under this Agreement, GAF will be paid a monthly "Administrative Fee" in the amount of 1/12 of 2% of the loans outstanding including both sold and unsold loans.
5. During the operation of the Loan Program, the Administrative Fee will be paid solely from Loan Program revenues unless otherwise mutually agreed by the Parties. If revenues are insufficient to cover all or a portion of the Administrative Fee, any shortfall shall be deferred until such time as revenues are sufficient. No interest shall be charged or accrued on any deferred Administrative Fees.
6. Prior to withdrawing funds to satisfy payment of the Administrative Fee, GAF will provide the Client with a quarterly invoice and statement delineating the status of the loan portfolio.

**C. CAPITALIZING GROW LONG BEACH AND THE INVESTMENT PERIOD**

1. The Parties agree that the Loan Program has been capitalized with an investment provided by the Client. This investment will be used solely for funding eligible SBA-guaranteed loans within the targeted areas identified by the Client in Exhibit 1 hereto.
2. The Client has originally invested \$1,150,000. However, since that time, a loss was incurred in the funds and the remaining capital is \$779,038.

The Client may elect to invest additional equity from time to time, all of which will be governed by the terms and conditions of this Agreement unless otherwise agreed to in writing. Payments made under this section shall be made by check or electronic funds transfer payable to "Grow America Fund – Long Beach."

- a. The Client investment represents the "unguaranteed portion" of each outstanding loan funded under the Loan Program. The parties acknowledge that the Client investment is therefore fully at risk of loss. It is anticipated that as principal is repaid by the small business borrowers, it will be relet in the same capacity to other borrowers eligible under the Loan Program.
- b. GAF using its SBLC license shall fund the "guaranteed portion" of each outstanding loan funded under the Loan Program to leverage the Loan Program to an approximate multiple of four times the total investment made by the Client.

- c. NDC has petitioned the NDC Foundation for a “match” to the Client’s investment into the Loan Program. The result of those efforts is that NDC is pleased to report the approval of an in-kind contribution to the Loan Program \$500,000.

**D. DISTRIBUTION OF REVENUES**

1. Revenues generated by Loan Program activities will be distributed in the following order:
  - a. First, to pay the Administrative Fee, including past due Administrative Fees as described in Section B;
  - b. Second, at the written election of the Client, to reinvest into the Loan Program;
  - c. Third, the balance will be remitted to the Client.

**E. TERMINATION**

1. This Agreement shall be effective on October 1, 2013 and shall continue in effect through September 30, 2017, unless sooner terminated according to Paragraphs 2 and 3 of this section.
2. This Agreement may not be terminated until October 1, 2015, unless both Parties mutually agree to the termination. Should termination rights be exercised, program assets will be distributed in Accordance with Section F, below.
3. Beginning October 1, 2015, either party may terminate this Agreement for any reason giving ninety (90) days notice to the other party. Should any party terminate this Agreement, Loan Program assets will be distributed in accordance with Section F, below.

**F. DISTRIBUTION OF ASSETS UPON TERMINATION**

1. Should termination occur as specified in Section E, the Client’s Net Investment will be distributed and this Agreement will be closed out as provided in this Section. The “close-out” period” is defined as the period beginning at the date of termination and ending on the date of the last payment of principal and interest by the borrowers.
2. During the close-out period, in lieu of the Administrative Fee, GAF will receive a monthly closeout Portfolio Management Fee equal to 1/12 of 2.5% of the loans serviced by GAF for the previous twelve (12) months, plus reasonable out of pocket costs incurred in servicing and collecting the outstanding loans. Loans serviced by GAF include loans held by GAF and loans sold in the secondary market. This fee, as well as any past due Portfolio Fee Income Receivable from 1/1/06 to the date of final windup, will be paid from debt service payments made by borrowers, recoveries and servicing fees generated during the close-out period. The Client shall not be obligated to pay any portion of the annual close-out management fee nor out of pocket costs that cannot be paid from the servicing fees and debt service payments on

loans.

3. In addition, GAF shall receive "incentive compensation" under one of two methods described below. The Client will be entitled to all principal and interest, net of interest paid on borrowed funds, except as described in paragraph 2, 3(a), 3(b) and 4:
  - a. If GAF terminates this Agreement, GAF will not receive any incentive compensation.
  - b. If the City terminates this Agreement, then GAF will receive incentive compensation in accordance with the following formula. Twenty five percent of the second and each succeeding \$500,000 invested by the City. Incentive compensation shall not exceed \$125,000 for each succeeding \$500,000 investment by the Client. The incentive compensation will be paid from debt service payments by borrowers.
4. Beginning on January 1, 2015 and continuing annually thereafter, if the Loan Program portfolio remains in excess of \$5 million for the calendar year, GAF will waive 20% of its incentive compensation for each year that such \$5 million portfolio is maintained.
5. GAF incentive compensation shall not be applicable if the Client terminates this Agreement for cause which shall be limited to failure to perform by GAF and acts of moral turpitude on the part of GAF.

## **G. MISCELLANEOUS PROVISIONS**

1. Right to Approve Applicants.

Client shall have the right to indicate its support for the loan application of each potential borrower at the point at which the original application is transmitted to GAF and again after the Loan Report is completed and ready for distribution to the GAF Loan Committee. Only if Client approves applicant at each juncture, will GAF process, approve and close each loan in accordance with its internal policies and procedures. Client will also be invited to "listen-in" and participate in the discussion of the applicant during the GAF Loan Committee Meeting during which each loan will be approved. Client will not have voting rights.

2. Ownership of Material and Documents.

All final reports and other materials prepared by GAF for the Client shall be the property of the Client, however all work papers and other source materials not provided to the Client shall be the property of GAF. GAF shall deliver such materials to the Client in accordance with the terms and conditions of this Agreement.

The Client shall not, without GAF's written consent, associate GAF's name with the report/product, if a subsequent change is made in such report/product after submission to the Client.

3. Right to Audit.

GAF shall establish and maintain appropriate procedures which will ensure the proper accounting of all funds paid to it under this Agreement. The Client or any of their duly authorized representatives shall have access to any books, documents, papers and records of GAF which are directly pertinent to a specific program for the purpose of making an audit, an examination excerpts and transcriptions. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any short periods of retention, all books, records and supporting details shall be retained for period of at least three (3) years after the expiration of the term of this Agreement.

4. Equal Opportunity.

GAF shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and of the rules, regulations and relevant orders of the Secretary of Labor regarding discrimination. In the event a party is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state, or local law, this Agreement may be cancelled, terminated or suspended in whole or in part by the Client, and that party may be declared ineligible for further Client contracts.

5. Conflicts of Interest.

No board member, officer or employee of the Client or its designees or agents, and no other public official who exercises any functions or responsibilities with respect to any requested technical assistance, shall be permitted to financially benefit from this Agreement or have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

6. Notices.

All notices shall be sent by certified mail, hand-delivery or overnight mail and in all events with a written acknowledgment of receipt to the address set forth at the beginning of this Agreement.

7. Responsibility for Claims.

Client and GAF, respectively, as indemnitor, will indemnify the other, as indemnitee, and save the other harmless from any and all loss, damage, expense and liability resulting from injuries to or death of persons, including but not limited to employees of the other Party, and damage to or destruction of property, including but not limited to the property of the other Party, arising out of or in any way connected with the performance of this Agreement or any operations hereunder by indemnitor, its agents or employees, excepting only such injury, death, damage or destruction as may be caused by the sole negligence or willful misconduct of the indemnitee, its agents or employees. Indemnitor shall, upon an indemnitee's request, defend at its sole cost any suit asserting a claim covered by this indemnity. It is the intent of the Parties that, where negligence is determined to have been contributory, principles of comparative

negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence.

8. Compliance with Laws, Venue.

GAF agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. This Agreement shall be construed, interpreted and the rights of the parties determined, in accordance with the laws of the State of California. The parties hereby irrevocably and unconditionally consent to submit to the jurisdiction of the courts of the State of California and of the United States of America located in California which shall have the exclusive jurisdiction for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby. The parties agree not to commence any action, suit or proceeding relating thereto except in such courts.

9. Assignment.

Neither this Agreement nor any rights, duties or obligations described herein may be assigned by either party without the prior express written consent of the other party. Such consent will not be unreasonably withheld.

10. Severability.

A determination that any part of this Agreement is invalid shall not invalidate or impair the force of the remainder of this Agreement.

11. Disclaimer.

The Client is a sophisticated business enterprise and has retained GAF for the purposes set forth in this Agreement and the parties acknowledge and agree that their respective rights and obligations are contractual in nature. Each party disclaims an intention to impose fiduciary agency rights or obligations on the other by virtue of the engagement hereunder.

12. Entire Agreement.

This Agreement contains the final agreement between the parties regarding the matters covered and supersedes any and all other agreements, either oral or in writing regarding the matters contained herein. No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

CITY OF LONG BEACH

By: [Signature] Assistant City Manager

Its: City Manager EXECUTED PURSUANT  
TO SECTION 301 OF  
GROW AMERICA FUND, INC. THE CITY CHARTER.

By: [Signature]  
Robert W. Davenport, Chairman

APPROVED AS TO FORM

12-10, 2013  
CHARLES PARKIN, City Attorney

By: [Signature]  
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

## **EXHIBIT 1**

### **Eligible Grow Long Beach Lending Areas**

The Grow Long Beach loan program will be available to eligible businesses located throughout the City of Long Beach.

Other eligibility criteria, if applicable, (job creation or retention, etc) is to be determined and documented by the Client.