

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

31447

THIS AGREEMENT is made and entered in duplicate as of 1/13,
~~2009~~¹⁰ 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 12/15, 2009, 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 Pine Avenue, Suite 1100, 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 Three Hundred Seventy Thousand Dollars (\$370,000.00) during the
City's fiscal year 2009-2010 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 activities, in the amount of One Hundred Sixty-Four Thousand and
Five Hundred Dollars (\$164,500.00); and (2) for grants in the amount of Two
Hundred Five Thousand and Five Hundred Dollars (\$205,500.00), as shown on

1 Exhibit "B" attached hereto.

2 The organizations and artists shown on Exhibit "B" as receiving
3 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,
4 Level II", "Community Projects Grants", and "Neighborhood Project Grants" must
5 apply for support and successfully meet PCA's established criteria for support.
6 City shall pay \$370,000.00 to PCA in installments as follows: Two Hundred
7 Thousand Dollars (\$200,000.00) on City's execution of this Agreement and the
8 remaining amount of One Hundred Seventy Thousand Dollars (\$170,000.00) in
9 installments of Twenty-One Thousand Two Hundred and Fifty Dollars (\$21,250.00)
10 each on January 2, 2010, February 2, 2010, March 2, 2010, April 2, 2010, May 2,
11 2010, June 2, 2010, July 2, 2010 and August 2, 2010.

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

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

26 4. On or before January 2, 2010, April 2, 2010, July 2, 2010 and
27 October 1, 2010, PCA shall submit to City a performance report of its activities, which
28 report shall include a statement of all arts and cultural groups and artists to whom funds

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

8 5.

9 A. PCA shall prepare and file with City a complete annual
10 financial report no later than November 15, 2010, covering the period October 1,
11 2009 through September 30, 2010 and accounting for the Three Hundred Seventy
12 Thousand (\$370,000.00) allocated to PCA under Section 2 hereof. At that time,
13 PCA shall return to City any revenues undistributed or unexpended by it on or prior
14 to September 30, 2010. Said financial report shall be certified by PCA's senior
15 executive officer to indicate that all expenditures are supported by receipts,
16 invoices, vouchers or other appropriate documentation and that such expenditures
17 were made in accordance with this Agreement. PCA shall maintain books,
18 financial records and files as necessary to support its certified financial
19 statements. The City Auditor and other appropriate City personnel shall have the
20 right to examine and audit the statements and supporting books, records and files
21 for three years following the expiration or sooner termination of this Agreement.

22 B. Notwithstanding anything to the contrary herein, the City
23 Manager may approve the retention by PCA of funds allocated to specific arts and
24 cultural groups and artists during 2009-2010 and not spent by September 30,
25 2010, so long as he finds that adequate progress and timely completion of the
26 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly
27 status reports on such projects and shall expedite completion in a form satisfactory
28 to the City Manager.

1 C. On or before October 30, 2010, PCA shall secure from each
2 arts and cultural group identified in Exhibit "B" a comprehensive annual financial
3 statement for the period October 1, 2009 through September 30, 2010. Said
4 financial statement shall be reviewed, audited and approved by each group's
5 board, and shall be forwarded to the City Manager, together with a copy of the
6 applicable report based on said review, or part of the annual financial statement.

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

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

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

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

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

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

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

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

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

1 (b) Workers' Compensation insurance as required by the Labor Code of
2 the State of California and employer's liability insurance in an amount not less than
3 One Million Dollars (\$1,000,000).

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

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

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

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

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

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

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

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

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

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

1 whichever first occurs.

2 15. The term of this Agreement shall begin at 12:01 a.m. on October 1,
3 2009, and shall terminate at midnight on September 30, 2010. Either party may
4 terminate this Agreement by giving thirty (30) days prior notice to the other party. The
5 complete annual financial report required by Section 5 shall be filed no later than
6 November 15, 2009, and any revenues to be returned shall be returned at the time of
7 said filing, unless otherwise allocated, with the approval of the City Manager.

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

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

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

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

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

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

27 22. In the event that there is any legal proceeding between the parties to
28 enforce or interpret this Agreement or to protect or establish any rights or remedies

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1 hereunder, the prevailing party shall be entitled to its costs and expenses, including
2 reasonable attorney's fees.

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

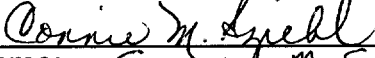
7 IN WITNESS WHEREOF, the parties hereto have executed this Agreement
8 with all formalities required by law as of the date first stated above.

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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12 Dated: November 5, 2009

By: 
Name: KAMRAN ASADI
Title: President

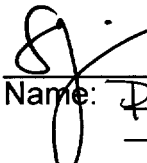
13
14
15 Dated: November 5, 2009

By: 
Name: CONNIE M SZIEBL
Title: Secretary

16
17 "PCA"

18
19 CITY OF LONG BEACH, a municipal
corporation

20 Dated: 1.13, 2009¹⁰

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

21
22 "City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

23
24 This Agreement is approved as to form on 1/5, 2009¹⁰.

25 ROBERT E. SHANNON, City Attorney

26
27 By 
Assistant

Exhibit A
PCA Operating Budget FY 2010: October 1,2009 through September 30, 2010

Total Budget

Staff Costs:	FY 2010	Admin	Fundraising	Grants & Training	Marketing	Neighborhoods	Design/ Public Art	City Support	Notes:
Admin Salaries & Benefits	133,948	133,948						133,948.00	Executive Director; Directors Assistant; Receptionist
Percentage of total budget	12.22%	12.22%	0.00%	0.00%	0.00%	0.00%	0.00%	12.22%	
Operations									
Advocacy	1,500	1,500							
Audit/Legal Fees	17,000	17,000							
Bank/Payroll/Serv	3,000	3,000							
Equipment/Computers	15,000	15,000							Copier/Computer Lease
Fundraising (Development)	58,500		58,500						Fundraising Consultant
Insurance	5,500	5,500						2,000.00	Property / Liability
Maintenance	8,000	8,000							
Memberships	6,000	2,000	2,000	2,000					
Meetings/Travel/Conferences	3,500	3,500							
Miscellaneous-License etc	250	250							
Outside Consultants	28,080	28,080						21,113.00	Accounting;
Postage	3,000	3,000							
Printing + Stationery Supplies	1,500				1,500				
Rent	-								
Parking	6,000	6,000							
Supplies	4,820	4,820							
Telephone & Internet	4,500	4,500							
Reserve Fund	-	-							
Total Operations	166,150	102,150	60,500	2,000	1,500	-	-	23,052	
Percentage of total budget	15.16%	9.32%	5.52%	0.18%	0.14%	0.00%	0.00%	2.10%	
Programs									
Allocations-Granting Program	209,500			4,500				205,000.00	
Special Events Program/Marketing	187,305				187,305				
Arts Learning	160,075					160,075			
Public Art	16,540						16,540.00		
Program Administration	222,507	-	-	-	20,436	56,585	137,486.00	8,000.00	
Program Total:	795,927	-	-	4,500	207,741	216,660	154,026	213,000	
percentage of revenue of total budg	72.62%	0.00%	0.00%	0.41%	18.95%	19.77%	14.05%	19.43%	
Total Expenses-PCA & PA	1,096,025	236,098	60,500	6,500	209,241	216,660	154,026	370,000	
Percentage of total budget	100.00%	21.54%	5.52%	0.59%	19.09%	19.77%	14.05%	33.76%	

**2009-2010 GRANT AWARDS
EXHIBIT B**

	1st payment Dec. 1st, 2009	2nd payment Feb. 15, 2010	3rd payment May 15, 2010	4th payment Oct. 15, 2010	Total Award
PROFESSIONAL ARTIIST FELLOWSHIP					
	100%	0%	0%	0%	Award
1	Lara Odell				\$1,800.00
2	Pamela K. Johnson				\$1,800.00
3	Sunny Nash				\$1,200.00
4	R. McLean Fahnestock				\$1,200.00
					\$6,000.00
OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)					
	25%	25%	25%	25%	Award
1	Khmer Arts Academy				\$9,012.72
2	Long Beach Opera				\$8,757.17
3	Long Beach Playhouse				\$7,230.11
					\$25,000.00
OPERATING GRANTS, LEVEL II (budgets >\$1M)					
	25%	25%	25%	25%	Award
1	International City Theatre				\$25,426.06
2	Musical Theatre West				\$24,613.73
3	Museum of Latin American Art				\$24,564.99
4	Long Beach Symphony Orchestra				\$23,395.22
					\$98,000.00
COMMUNITY PROJECT GRANTS					
	25%	25%	25%	25%	Award
1	Partners of Parks				\$3,070
2	University Art Museum				\$4,915
3	Carpenter Performing Arts Center				\$4,915
4	South Coast Dance Arts Alliance				\$4,915
5	Historical Society of Long Beach				\$3,070
6	Hmong Association of Long Beach, Inc.				\$3,070
7	Camerata Singers of Long Beach				\$3,585
8	The Found Theatre				\$3,070
9	Arts and Services for Disabled				\$4,915
10	The Garage Theatre				\$2,765
11	The Second City Council				\$2,765
12	Jazz Angels				\$1,945
					\$43,000.00
NEIGHBORHOOD PROJECT GRANTS					
	75%	0%	0%	25%	Award
1	Bethune Theatredanse				\$2,390.00
2	Primetime Players				\$2,390.00
3	Rogue Artistic Ensemble				\$1,935.00
4	Khmer Girls in Action				\$1,725.00
5	Long Beach Museum of Art				\$1,345.00
6	Deborah Wallin				\$855.00
7	Kenneth Walker Dance Project				\$200.00
8	The Living Love Foundation				\$600.00
9	Long Beach Shakespeare Co.				\$560.00
					\$12,000.00
	Ongoing Microgrants, Technical Assistance and Professional Development Grants				\$21,500.00
	GRAND TOTALS				\$205,500.00