

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

RESOLUTION NO. RES-06-0005

1  
2  
3 A RESOLUTION OF THE CITY COUNCIL OF THE  
4 CITY OF LONG BEACH AUTHORIZING THE CITY  
5 MANAGER TO SUBMIT AN APPLICATION FOR A  
6 \$1,000,000 GRANT AND EXECUTE ALL NECESSARY  
7 DOCUMENTS WITH THE CALIFORNIA CULTURAL AND  
8 HISTORICAL ENDOWMENT FOR FUNDING UNDER THE  
9 CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD  
10 PARKS, AND COASTAL PROTECTION ACT OF 2002 FOR  
11 DEVELOPMENT OF THE RANCHO LOS CERRITOS  
12 VISITOR EDUCATION CENTER

13  
14 WHEREAS, the State of California provides grants to public entities under  
15 the Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002  
16 (“Act”); and

17 WHEREAS, the California Cultural and Historical Endowment (“CCHE”) has  
18 been given the responsibility for administration of certain grant funds; and

19 WHEREAS, the procedures for these grant funds require that the applicant  
20 for grant funds approve submission of the application by resolution; and

21 WHEREAS, if a grant is given to the applicant, the applicant must enter an  
22 agreement with the CCHE for the project and make certain assurances;

23 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
24 follows:

25 Section 1. That the City Manager of the City of Long Beach is hereby  
26 authorized to submit an application for \$1,000,000 in funding for the development of the  
27 Rancho Los Cerritos Visitor Education Center (“Project”) to be funded by the Act.

28 Sec. 2. The City Manager is hereby authorized to conduct all negotiations

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 and execute and submit all documents including but not limited to applications,  
2 agreements, amendments, payments requests, and other documents which may be  
3 necessary to complete the Project with funding through the Act.

4 Sec. 3. The City of Long Beach certifies that it has or will have sufficient  
5 funds to operate and maintain the Project and, where applicable, to complete it and that  
6 it has \$1,000,000 in matching funds.

7 Sec. 4. The City of Long Beach certifies that it has reviewed, understands  
8 and agrees to the General Provisions of the Procedural Guide, which Provisions are  
9 attached to this Resolution.

10 Sec. 5. The City certifies that the projects conform to the Open Space and  
11 Recreation Element of the City's General Plan.


12 Sec. 6. This Resolution shall take effect immediately on its adoption by the  
13 City Council, and the City Clerk shall certify the vote adopting this Resolution.

14 I hereby certify that this Resolution was adopted by the City Council of the  
15 City of Long Beach at its meeting on January 24, 2006, by the following vote:

16 Ayes: Councilmembers: Baker, Colonna, O'Donnell,  
17 Kell, Richardson, Reyes Uranga,  
18 Lerch.

19 \_\_\_\_\_  
20 Noes: Councilmembers: None.  
21 \_\_\_\_\_

22 Absent: Councilmembers: Lowenthal, Gabelich.  
23 \_\_\_\_\_

24  
25  \_\_\_\_\_  
26 City Clerk

## Exhibit C – Standard Terms and Conditions

### **1. Approval**

Matching funds may be counted towards the Grantee's matching fund requirement retroactive to the date of the approval of funding by the CCHE Board on \_\_\_\_\_.

Grantee will need to document the amount and source of matching funds used toward one or more of the tasks set forth in the Scope of Work. This documentation will be submitted to CCHE in the form of a CCHE Invoice.

This Agreement is of no force or effect until signed by both parties. Grantee may not commence performance on portions of the Scope of Work for which CCHE funds will be used and reimbursement is requested.

### **2. Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

### **3. Assignment**

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of CCHE in the form of a formal written amendment by the parties approved by CCHE.

### **4. Audit**

Grantee agrees that CCHE, the Department of Finance (DOF), Office of State Audits and Evaluations, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for an audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Authority: Government Code 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

### **5. Indemnification**

Grantee agrees to indemnify, defend and save harmless CCHE its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.

### **6. Independent Contractor**

Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

**7. Certification Clauses**

The CONTRACTOR CERTIFICATION CLAUSES contained in this Agreement as Exhibit E entitled State Certification Requirements are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

**8. Timeliness**

Time is of the essence in this Agreement.

**9. Governing Law**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

**10. Unenforceable Provision**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

## **Exhibit D – Special Terms and Conditions**

### **1. Subcontracts**

The Grantee is responsible for all subcontracted work. Subcontractors not specifically identified in the grant application must be obtained using a competitive bidding process, or provide a satisfactory explanation and obtain CCHE staff approval for non-compliance with this requirement. Nothing in this Agreement creates any contractual relationship between any third party contractor and CCHE. All subcontracts must be in writing and must include specific language that establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the subcontract and/or the grant agreement.

### **2. Government Permits**

Grantee is responsible for ensuring compliance with all applicable permitting requirements that may be required to accomplish the Project described in the CCHE Workplan. No work that is subject to any such requirements may proceed under this Grant Agreement until written evidence of compliance is received by the Grant Manager.

### **3. Acknowledgment and Publicity**

The Grantee agrees that it will acknowledge CCHE's support whenever Projects that are funded, in whole or in part, by this Agreement are publicized in any news media, brochures, articles, seminars or other type of promotional material. Any exhibits, buildings, displays, publications, or other products which are made possible by or derived in whole or in part from this Project shall acknowledge the assistance of CCHE as follows, or by similar acknowledgment: "Funding for this Project has been provided in part by the California Cultural and Historical Endowment."

### **4. Audits/Accounting/Records**

The Grantee shall maintain satisfactory financial accounts, documents, and records relating to the Project. The accounts, documents, and records relating to the Project shall be retained by the Grantee for three years following the date of final reimbursement by CCHE under the paragraph entitled "Term of Agreement" in Part 1, and shall be subject to examination and audit by CCHE, the Department of Finance, Office of State Audits and Evaluations, during that period. The Grantee may use any generally accepted accounting procedures, provided such system meets minimum requirements established by the State of California.

### **5. Inspection**

Throughout the term of this Agreement, CCHE shall have the right to inspect the Project area to ascertain compliance with this Grant Agreement. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Grant Agreement including subcontract-supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the CCHE of the premises of the Grantee or a subcontractor, the Grantee shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties.

### **6. Interest Restrictions**

Any interest earned from grant funds shall be applied to the Project for eligible Project needs.

## **7. Travel**

Any reimbursement for necessary travel and per diem shall be at rates specified by the California Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the Grantee. No travel outside of California shall be reimbursed unless prior written authorization is obtained from the State. Reimbursement for travel must be documented in detail and copies of receipts attached to the specific CCHE Invoice involving travel.

## **8. Operations and Maintenance**

The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project, if any, throughout the term of this Grant Agreement, consistent with the purposes for which this grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; CCHE shall not be liable for any cost of such maintenance, management or operation.

## **9. Damages for breach affecting tax exempt status**

In the event that any breach of any of the provisions of this Agreement by the Grantee result in the loss of tax exempt status for any state bonds, or if such breach results in an obligation of the part of CCHE to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse CCHE in an amount equal to any damage paid by or loss incurred by CCHE due to the breach.

## **10. Change of budget**

Grantee agrees that any refunds, rebates, credits, donations, in-kind contributions or other amounts (including any interest thereon) accruing or received by the Grantee after the Agreement has been executed with CCHE be immediately reported in writing to CCHE if such items pertain to the approved list of items that has received prior approval for CCHE funding. CCHE will then have the opportunity to adjust and amend the budget of the Agreement accordingly to reflect the source and amount of such budget items.

## **11. Liability**

Grantee agrees to indemnify, defend and save harmless CCHE and the State, its officers, agents and employees, from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except for active negligence of CCHE, its officers, agents or employees. The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

**[Delete the following paragraph from all non-profit organization Grant Agreements]**

**[Where the Grantee is a public entity, add:** The parties expressly acknowledge that this Agreement is an agreement for the subvention of public funds from CCHE to the Grantee, and is not an agreement as that term is defined in Government Code section 895 or a construction contract under Civil Code sections 2782 or 2783. Accordingly, it is acknowledged Grantee does not, in matters arising under this Agreement, have any right to contribution and indemnity from CCHE and/or the State of California arising under Government Code Sections 895.2 and 895.6.]

Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement, except such liability as results from CCHE's active negligence or the

intentional wrongdoing of CCHE, its member(s), officer(s), agent(s), or employee(s), and, in the case of joint negligence, is in direct proportion to CCHE's share of fault.

## **12. Liability Insurance**

Throughout the term of this Agreement, the Grantee shall provide and maintain public-liability and property-damage insurance for liability assumed by the Grantee under this Agreement with minimum limits of liability as follows:

- A single limit for bodily injury (including death) and property damage liability combined of \$1,000,000 each occurrence and \$1,000,000 in the aggregate.
- This insurance shall be issued by a company or companies admitted to transact business in the State of California.
- CCHE is not responsible for premiums and assessments on any insurance policy.
- The company or companies providing such insurance shall have no recourse against CCHE or the State of California, or their members, officers and employees, or any of them, for payment of any premiums or assessments under such insurance.
- A copy of Grantee's current insurance policy shall be submitted to CCHE for their records.

## **13. Loss Insurance**

Throughout the term of this Agreement, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement.

CCHE is not responsible for premiums and assessments on any insurance policy.

## **14. Withholding of Grant disbursements**

CCHE may withhold all or any portion of the grant funds provided for by this Grant Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement or the Grantee fails to maintain reasonable progress toward completion of the Project.

## **15. Compliance with Law**

Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state and local laws, rules, guidelines, regulations, and applicable requirements.

## **16. Dispute Resolution**

Any claim that the Grantee may have regarding the performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the CCHE Grant Manager in writing within thirty days of its accrual. The Grantee and the CCHE Executive Officer or Executive Officer's designee shall then make a good faith effort to resolve the claim, and process an amendment to this Agreement to implement the terms of any such resolution. If the Grantee and the CCHE are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer's designee shall be final.

## **17. Grantee's Name Change**

An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal

documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

**18. Severability**

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.

**19. Standard of Professionalism**

The Grantee shall conduct all work consistent with the professional standards of the industry and type of work being performed under the Agreement.

**20. Amendments**

Except as otherwise provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement to be incorporated herein shall be binding on any of the parties hereto.

**21. Venue**

All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue.

**22. Sections and Headings**

The headings and captions of the various sections of this Agreement have been inserted only for the purpose of convenience, and are not a part of this Agreement and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this Agreement.

**23. Entire Agreement**

This Agreement, and the Exhibits, constitutes the entire contract between the parties hereto, relating to the Project and may not be modified except by an instrument in writing signed by the parties hereto.