

35338

GRANT AGREEMENT

This Grant Agreement (Agreement) is made as of July 18, 2019, by and between THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY by and through its member campus California State University, Long Beach ("CSU"), which is the State of California acting in its higher education capacity, and the CITY OF LONG BEACH, a municipal corporation ("City"), pursuant to a minute order adopted by the Long Beach City Council at its meeting on March 19, 2019.

RECITALS

A. This Agreement is made in connection with a grant in the amount of \$1,000,000 ("Grant Commitment Amount") made by City to CSU ("Grant"), as part of City's ongoing efforts to provide educational and vocational training resources in City's downtown professional employment center.

B. CSU proposes to execute a lease with Long Beach Center, LLC ("Landlord") for at least a 10-year term ("Proposed Lease") for classroom space which will accommodate up to 200 seats located at Landlord's new development site at the northwest corner of 3rd Street and Long Beach Boulevard adjacent to the Metro Blue Line ("Premises"), or alternatively, a lease mutually acceptable to CSU and City for other suitable classroom space premises which will accommodate up to 200 seats located in the City's downtown area for at least a 10-year term ("Alternate Lease").

C. City is giving CSU the Grant in the Grant Commitment Amount in recognition of its experience and expertise in providing high quality education and its ability to help advance City's goal of providing educational and vocational training closer to City's professional employment centers in City's west side and downtown business districts.

AGREEMENT

1. CSU's Representations and Warranties. To induce City to enter into this Agreement and to make the Grant, CSU represents and warrants:

1.1 Capacity. CSU has the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Agreement, the Proposed Lease and/or the Alternate Lease (collectively, the "Grant Documents").

1.2 Authority and Enforceability. CSU's execution, delivery, and performance of this Agreement has been duly authorized and does not require any registration with, consent, or approval of, notice to, or any additional action by any person, entity or government authority.

1.3 Compliance with Other Instruments. The execution and delivery of this Agreement, and compliance with its terms, shall not result in a breach of any of the terms or conditions of, or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which Foundation is a party or by which Foundation may be bound or affected.

1.4 Compliance with Law. The execution and delivery of this Agreement does not conflict with, result in a breach or default under, or create any lien or charge under any provision of any governmental regulation to which CSU is subject.

1.5 No Untrue Statements. All statements, representations, and warranties made by CSU in this Agreement (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the date of this Agreement; (b) do not and shall not contain any untrue statement of a material fact; and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. CSU understands all such statements, representations, and warranties shall be deemed to have been relied on by City as a material inducement to make the Grant.

2. Grant Conditions and CSU's Covenants.

2.1 Grant Conditions. City shall disburse to CSU all Grant funds in the Grant Commitment Amount immediately upon CSU's execution of the Proposed Lease or the Alternate Lease, as applicable. If CSU, for whatever reason, is not in occupancy of classroom premises by December 31, 2021 then this Agreement shall expire, CSU shall no longer be obligated to perform under this Agreement, and CSU shall promptly return all unused Grant proceeds to City.

2.1.1 CSU shall insert into all contracts entered by CSU relating to the construction on the Premises, the Proposed Lease, and the Alternate Lease the following clause:

"This Agreement shall in no way bind the City of Long Beach, its officials or employees, nor obligate them for any costs, expenses, or requirements whatsoever under this agreement, or which are in any manner connected with the subject matter of this agreement."

2.2 CSU's Expenditure of Grant Funds. CSU shall expend Grant proceeds on its landlord's construction of classroom space and satisfaction of lease payments. City acknowledges CSU's use of Grant funds for construction of classroom space and satisfaction of lease payments for its premises is an appropriate use under this Agreement and satisfies CSU's obligation under this Agreement to help advance City's goal of providing educational and vocational training closer to City's professional employment centers in City's west side and downtown business districts. CSU shall keep such documents and records in its possession for at least three (3) years after termination of the Proposed Lease or Alternate Lease, and shall allow City and its auditors reasonable access to such documents and records upon sixty days written notice, but in no event more frequently than once per calendar year.

2.3 CSU Cooperation. CSU shall make a good faith effort to work with Pacific Gateway (City's Workforce Development Bureau) to identify professional development needs of employers in the professional employment centers on City's west side and downtown business districts.

2.4 Premises Access. City acknowledges landlord is solely responsible for constructing and developing the premises, and, prior to CSU's execution of the Proposed Lease or Alternate Lease, CSU agrees to obtain for City the landlord's permission for reasonable access to the premises for City representatives and their invitees for marketing and promotional purposes.

2.5 City's Use of Premises. After landlord's completion of the premises, the issuance of a Certificate of Occupancy, and CSU's execution of the Proposed Lease or Alternate Lease, CSU will allow City to occasionally use classroom space to provide educational instruction, at City's sole cost for such instruction, at no charge to City for the use of classroom space, provided City's use of classrooms does not conflict with CSU's use. City shall reserve classroom space within the premises by using CSU's regular facility reservation and permitting process.

3. Term. The Term of this Agreement shall immediately expire, and City shall have no further obligation to fund the Grant Commitment Amount, in the event CSU has not executed the Proposed Lease or the Alternate Lease on or before December 31, 2021.

4. Default and Remedies.

4.1 Events of Default. CSU shall be in default under this Agreement if any of the following events ("Events of Default") occur: (a) CSU's failure to execute a lease for the Premises upon their completion by Landlord; or (b) the failure to be true in any material respect when made of any representation or warranty of CSU contained herein or in the other Grant Documents. City shall be in default under this Agreement if any of the following Events of Default occur: (a) City's failure to transfer the Grant for the total Grant Commitment Amount promptly upon CSU's lease of the Premises from Landlord; or (b) City's failure to be true in any material respect when made of any representation or warranty of City contained herein or in the other Grant Documents.

4.2 Rights and Remedies. Subject to CSU and City's right to notice of default and right to cure the default(s), to the extent required by law, if an Event of Default occurs, CSU and City have the following rights and remedies ("Rights and Remedies"):

4.2.1 Declare a Default. To declare this Agreement in default.

4.2.2 Indemnity. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an Agreement as defined by Section 895 of said Code, the parties hereto, as among themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each party indemnifies and holds harmless the other party for any loss, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. Parties to this Agreement agree to indemnify, defend, and hold harmless each other against any and all liability, expense, and claims arising from their respective acts and omissions. The provisions of Section 2278 of the California Civil Code are made a part hereof as if fully set forth.

4.2.3 Remedies Cumulative. City and CSU may (but is not required to) exercise any or all of the rights under this Agreement. All of Rights and Remedies contained in this Agreement are cumulative and are in addition to any other Rights and Remedies created in any other Grant Document or existing at law or in equity.

5. Miscellaneous.

5.1 No Waivers. If City or CSU delays in exercising or fails to exercise any of their respective rights under this Agreement, that delay or failure shall not constitute a waiver of any other rights or of any breach, default, or failure of condition under this Agreement. No waiver by City or by CSU of any of their respective rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by the affected party.

5.2 Entire Agreement. This Agreement is the entire understanding between City and CSU about the Grant and CSU's use of the Grant proceeds, and may not be modified, amended, or terminated except by written agreement signed by City and CSU.

5.3 Assignment. This Agreement inures to and binds the heirs, legal representatives, successors, and assigns of CSU and City; provided, however, that CSU may not assign this Agreement, or assign or delegate any of its rights or obligations without City's prior written consent in each instance, which consent City may not unreasonably withhold.

5.4 Notices. Any notice required to be provided in this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated below in this Section or to such other address as a party may designate by written notice to the other. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

CSU: California State University, Long Beach
1250 Bellflower Blvd.
Long Beach, CA 90840
Attn: Vice President, Division of Administration and Finance

City: City of Long Beach
333 W. Ocean Blvd., 3rd Floor
Long Beach, CA 90802
Attn: Economic and Property Development Director

5.5 No Third-Party Beneficiary. This Agreement is for the sole benefit of City and CSU and is not for the benefit of anyone else. All conditions to City's obligation to make any payment are solely for City's benefit. No other person or entity shall have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.

5.6 Governing Law. This Agreement shall be construed and enforced for all purposes according to the laws of the State of California.


5.7 Time Is of the Essence. Time is of the essence with respect to all obligations of this Agreement.

5.8 Severability. If any provision of this Agreement, or the application of it to any party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Agreement being severable in any such instance.

IN WITNESS WHEREOF, CSU and City have executed and delivered this Grant Agreement as of the date first written above.


“CSU”

California State University, Long Beach

By:  7/23/19
Scott Apel, Vice President
Division of Administration and Finance


“City”

CITY OF LONG BEACH, a municipal corporation

By:  Tom Modica
Patrick H. West Assistant City Manager
City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

Approved as to form this 13 day of August, 2019.

CHARLES PARKIN, City Attorney

By: 
Deputy