

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 AGREEMENT

2 **34119**

3 THIS AGREEMENT is made and entered in duplicate as of December 4,  
4 2015 for reference purposes only, pursuant to a minute order adopted by the City Council  
5 of the City of Long Beach at its meeting held on December 1, 2015, by and between the  
6 PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, a California  
7 nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH, with a  
8 place of business at 350 Elm Avenue, Long Beach, California 90802 ("PCA"), and the  
9 CITY OF LONG BEACH, a municipal corporation ("City").

10 WHEREAS, since 1985, PCA and City have had a contractual relationship  
11 pursuant to which City allocated and distributed certain funds to support a broad range of  
12 arts and cultural activities in City and under which PCA acted as administrator and  
13 organizer for various arts and cultural activities and responsibilities; and

14 WHEREAS, it is the desire and intent of PCA and City to continue their  
15 relationship for another year;

16 NOW, THEREFORE, the parties hereto agree as follows:

- 17 1. The above recitals are incorporated herein.  
18 2.

19 A. In accordance with the allocation authorized by the City  
20 Council pursuant to the recommendation of the PCA, City shall pay to PCA a sum  
21 of Three Hundred Fifty-Four Thousand Three Hundred Dollars (\$354,300) during  
22 the City's fiscal year 2015-2016 to provide financial support in the amounts shown  
23 on Exhibit "A", attached hereto and incorporated herein by this reference: (1) to  
24 offset PCA operating budget costs including administration, staff coordination, and  
25 fundraising activities, in the amount of One Hundred Sixty-Four Thousand Three  
26 Hundred Dollars (\$164,300); and (2) for grants in the amount of One Hundred  
27 Ninety Thousand Dollars (\$190,000), as shown on Exhibit "B" attached hereto.

28 In addition to the above, the City of Long Beach shall provide to PCA a one-

1 time Challenge Grant in an amount up to Fifty Thousand Dollars (\$50,000). The  
2 Challenge Grant is intended to provide an incentive for private contributions to the  
3 Arts Council whereby the City shall match all the donations on a one-to-one basis  
4 for contributions received October 1, 2015 to September 30, 2016 from non-  
5 governmental sources for the marketing of the arts and cultural community of Long  
6 Beach, as described on Exhibit "A-1" attached hereto and incorporated herein.

7 The organizations and artists shown on Exhibit "B" as receiving  
8 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,  
9 Level II", and "Community Projects Grants" must apply for support and  
10 successfully meet PCA's established criteria for support. City shall pay Three  
11 Hundred Fifty-Four Thousand Three Hundred Dollars (\$354,300) to PCA in  
12 installments as follows: One Hundred Sixty Thousand Dollars (\$160,000) on City's  
13 execution of this Agreement and the remaining amount of One Hundred Ninety-  
14 Four Thousand Three Hundred Dollars (\$194,300) in installments of Twenty-Four  
15 Thousand Two Hundred Eighty-Seven Dollars and Fifty Cents (\$24,287.50) on the  
16 second calendar day of each month beginning January 2016 through August  
17 2016.

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

27 3. Before any payment is made on invoices from each arts and cultural  
28 group and artist shown on Exhibit "B", PCA shall assure that the funds requested will be

1 used appropriately to promote cultural and arts activities in Long Beach to the benefit of  
2 the Long Beach citizenry and shall so certify in the performance report required in  
3 Section 4 below.

4 4. On or before January 2, 2016, April 2, 2016, July 2, 2016 and  
5 October 1, 2016, PCA shall submit to City a performance report of its activities, which  
6 report shall include a statement of all arts and cultural groups and artists to whom funds  
7 were distributed during the preceding three-month period and certification that each such  
8 group or artist met the provisions of this Agreement. PCA shall require that the arts and  
9 cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit  
10 an interim and final report statement to PCA, setting forth the group's financial condition  
11 and disclosure of all expenses, revenues, and fund balances relating to funds given to  
12 said groups hereunder. These statements shall be prepared and submitted on a  
13 schedule that will permit them to be reviewed by the City upon request.

14 5.

15 A. PCA shall prepare and file with City a complete annual  
16 financial report no later than November 15, 2016, covering the period October 1,  
17 2015 through September 30, 2016 and accounting for the Three Hundred Fifty-  
18 Four Thousand Three Hundred Dollars (\$354,300) allocated to PCA under Section  
19 2 hereof. At that time, PCA shall return to City any revenues undistributed or  
20 unexpended by it on or prior to September 30, 2016. Said financial report shall be  
21 certified by PCA's senior executive officer to indicate that all expenditures are  
22 supported by receipts, invoices, vouchers or other appropriate documentation and  
23 that such expenditures were made in accordance with this Agreement. PCA shall  
24 maintain books, financial records and files as necessary to support its certified  
25 financial statements. The City Auditor and other appropriate City personnel shall  
26 have the right to examine and audit the statements and supporting books, records  
27 and files for three years following the expiration or sooner termination of this  
28 Agreement.

1                   B.     Notwithstanding anything to the contrary herein, the City  
2     Manager may approve the retention by PCA of funds allocated to specific arts and  
3     cultural groups and artists during 2015-2016 and not spent by September 30,  
4     2016, so long as he finds that adequate progress and timely completion of the  
5     projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly  
6     status reports on such projects and shall expedite completion in a form satisfactory  
7     to the City Manager.

8                   C.     On or before October 30, 2016, PCA shall secure from each  
9     arts and cultural group identified in Exhibit "B" a comprehensive annual financial  
10    statement for the period October 1, 2015 through September 30, 2016. Said  
11    financial statement shall be reviewed, audited and approved by each group's  
12    board, and shall be forwarded to the City Manager, together with a copy of the  
13    applicable report based on said review, or part of the annual financial statement.

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

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

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

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

27                  10.    City, its officials and employees shall not have any control over the  
28    conduct of PCA's activities or the employees of PCA. PCA expressly warrants that it will

1 not at any time or in any manner represent that PCA or any of PCA's agents, volunteers,  
2 subscribers, members, officers or employees are in any manner the agents, volunteers,  
3 subscribers, officers or employees of City.

4 11. PCA shall with respect to this Agreement indemnify and hold  
5 harmless City, its officials, employees and agents (collectively in this Section "City") from  
6 and against any and all liability, claims, demands, damage, loss, causes of action,  
7 proceedings, penalties, costs and expenses (including reasonable attorney's fees, court  
8 costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims  
9 include by way of example but are not limited to: Claims for property damage, personal  
10 injury or death arising in whole or in part from any negligent act or omission of PCA, its  
11 officers, employees, agents, or anyone under PCA's control (collectively "Indemnitor");  
12 PCA's breach of this Agreement; misrepresentation; willful misconduct; and Claims by  
13 any employee of Indemnitor relating in any way to worker's compensation. Independent  
14 of the duty to indemnify and as a free-standing duty on the part of PCA, PCA shall defend  
15 the City and shall continue such defense until the Claim (including allegations in a Claim)  
16 is resolved, whether by settlement, judgment or otherwise. No finding or judgment of  
17 negligence, fault, breach, or the like on the part of Indemnitor shall be required for the  
18 duty to defend to arise. PCA shall notify the City of any Claim within ten (10) days.  
19 Likewise, the City shall notify PCA of any Claim, shall tender the defense of such Claim  
20 to PCA, and shall assist PCA, as may be reasonably requested, in such defense.

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

26 (a) Commercial general liability insurance (equivalent in scope to ISO  
27 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million  
28 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general

1 aggregate. Such coverage shall include but not be limited to broad form  
2 contractual liability, cross liability, independent contractors liability, and products  
3 and completed operations liability. The City, its officials, employees and agents  
4 shall be named as additional insureds by endorsement (on City's endorsement  
5 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG  
6 20 26 11 85), and this insurance shall contain no special limitations on the scope  
7 of protection given to the City, its officials, employees and agents.

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

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

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

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

27 PCA shall require that all contractors and subcontractors which PCA uses  
28 in the performance of services hereunder maintain insurance in compliance with this

1 Section unless otherwise agreed in writing by City's Risk Manager or designee.

2 Prior to the start of performance, PCA shall deliver to City certificates of  
3 insurance and required endorsements for approval as to sufficiency and form. The  
4 certificate and endorsements for each insurance policy shall contain the original signature  
5 of a person authorized by that insurer to bind coverage on its behalf. In addition, PCA,  
6 shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to  
7 City certificates of insurance and endorsements evidencing renewal of such insurance.  
8 City reserves the right to require complete certified copies of all policies of PCA and  
9 PCA's contractors and subcontractors, at any time. PCA shall make available to City's  
10 Risk Manager or designee all books, records and other information relating to the  
11 insurance coverage required herein, during normal business hours.

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

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

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

1 many employees as PCA deems necessary for performance of this Agreement.

2 14. Any notice required hereunder or desired to be given by either party  
3 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
4 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California  
5 90802 Attn: City Manager and to PCA at the address first shown herein. Change of  
6 address shall be given in the same manner as stated herein. Notice shall be deemed  
7 given on the date deposited in the mail or on the date personal delivery is made,  
8 whichever first occurs.

9 15. The term of this Agreement shall begin at 12:01 a.m. on October 1,  
10 2015, and shall terminate at midnight on September 30, 2016. Either party may  
11 terminate this Agreement by giving thirty (30) days prior notice to the other party. The  
12 complete annual financial report required by Section 5 shall be filed no later than  
13 November 15, 2016, and any revenues to be returned shall be returned at the time of  
14 said filing, unless otherwise allocated, with the approval of the City Manager.

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

17 17. The acceptance of performance or the payment of any money by  
18 City shall not operate as a waiver of any provision of this Agreement, or of any right to  
19 damages or indemnity stated in this Agreement. The waiver of any breach of this  
20 Agreement shall not constitute a waiver of any other or subsequent breach of this  
21 Agreement.

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

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



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

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

6           22. In the event that there is any legal proceeding between the parties to  
7 enforce or interpret this Agreement or to protect or establish any rights or remedies  
8 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
9 reasonable attorney's fees.

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

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

3 PUBLIC CORPORATION FOR THE ARTS  
4 OF THE CITY OF LONG BEACH, a  
5 California nonprofit corporation, doing  
6 business as ARTS COUNCIL FOR LONG  
7 BEACH

8 12-9-15, 2015

9 By [Signature]  
10 Name: MARCO SCHINDELHANN  
11 Title: PRESIDENT

12 December 9, 2015

13 By [Signature]  
14 Name: VICTORIA BRYAN  
15 Title: EXECUTIVE DIRECTOR

16 "PCA"

17 CITY OF LONG BEACH, a municipal  
18 corporation

19 Dec. 17, 2015

20 By [Signature]  
21 City Manager  
22 Assistant City Manager  
23 EXECUTED PURSUANT  
24 TO SECTION 301 OF  
25 THE CITY CHARTER.

26 "City"

27 This Agreement is approved as to form on 12/14, 2015.

28 CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664



## **Exhibit A-1**

### **City of Long Beach Challenge Grant for Arts Council for Long Beach Fiscal Year 2015-2016**

The City of Long Beach is providing a one-time Challenge Grant up to \$50,000 to the Arts Council for Long Beach (Arts Council). The Challenge Grant is intended to provide an incentive for private contributions to the Arts Council by the City matching the donations on a one-to-one basis for contributions received October 1, 2015 to September 30, 2016 from non-governmental sources for the marketing of the arts and cultural community of Long Beach. Detailed provisions of the Challenge Grant are below.

#### **Challenge Grant Provisions:**

1. Donations should be received from individual donors, foundations or corporations for the marketing of the arts and cultural community of Long Beach. The City will match new donations on a one-to-one basis. The City will not match donations from other sources. The donations will not be matched if the money is intended to be used for or is used for general operations of the Arts Council. The City will match up to \$50,000 of the amount of said donations received during the fiscal year.
2. The Arts Council must submit evidence (suitable to the City) of new donations made for the marketing of the arts and cultural community of Long Beach during the fiscal year beginning October 1, 2015 and ending on September 30, 2016. All evidence must be submitted to the City Manager's Office no later than October 2, 2016. The Arts Council can submit evidence to the City at the same time its installment invoice is given to the City for payment of the other allocated funding under the contract (\$354,300). The City may request reasonable reports or information to ensure grant compliance.
3. Any grant funds not utilized for the intended purpose by September 30, 2017 (one year after the grant match period) must be returned to the City or the City must authorize an extension.
4. The receipt or appropriation of Challenge Grant funds should not to be used in any way to determine compensation or bonuses.

**2015-2016 Grant Awards**

**Exhibit B**

	1st payment 1/15/16	2nd payment 5/15/16	3rd payment 11/15/16	Total Award
<b>ARTIST FELLOWSHIP</b>	100%	0%	0%	
Christine Nguyen	\$4,000.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$ 4,000
Ramon Rodriguez	\$2,000.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$ 2,000
Gary Alvarez	\$2,000.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$ 2,000
Lara Odell	\$2,000.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$ 2,000
Connie DK Lane	\$2,000.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$ 2,000
				\$ 12,000.00

	33%	33%	34%	
<b>OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)</b>				
Musica Angelica	660.00	660.00	680.00	\$ 2,000.00
Long Beach Playhouse	1,815.00	1,815.00	1,870.00	\$ 5,500.00
				\$ 7,500.00

	33%	33%	34%	
<b>OPERATING GRANTS, LEVEL II (budgets &gt;\$1M)</b>				
Musical Theatre West	5,351.37	5,351.37	5,513.53	\$ 16,216.26
Long Beach Opera	6,328.97	6,328.97	6,520.76	\$ 19,178.70
International City Theatre	5,886.72	5,886.72	6,065.11	\$ 17,838.56
Arts & Services for Disabled	5,723.79	5,723.79	5,897.24	\$ 17,344.82
Long Beach Symphony Orchestra	6,468.63	6,468.63	6,664.65	\$ 19,601.90
Museum of Latin American Art	6,375.52	6,375.52	6,568.72	\$ 19,319.76
				\$ 109,500.00

	50%		50%	
<b>COMMUNITY PROJECT GRANTS</b>				
Homeland Cultural Center	2,500.00	<del>XXXXXX</del>	2,500.00	\$ 5,000
University Art Museum	2,000.00	<del>XXXXXX</del>	2,000.00	\$ 4,000
Carpenter Performing Arts Center	2,000.00	<del>XXXXXX</del>	2,000.00	\$ 4,000
Hmong Association of Long Beach	1,500.00	<del>XXXXXX</del>	1,500.00	\$ 3,000
The Garage Theatre	1,500.00	<del>XXXXXX</del>	1,500.00	\$ 3,000
The Rock Club	1,500.00	<del>XXXXXX</del>	1,500.00	\$ 3,000
Cambodia Town Culture Festival	1,500.00	<del>XXXXXX</del>	1,500.00	\$ 3,000
Long Beach Camerata Singers	1,500.00	<del>XXXXXX</del>	1,500.00	\$ 3,000
Children's Theatre of Long Beach	1,000.00	<del>XXXXXX</del>	1,000.00	\$ 2,000
Long Beach Community Band	750.00	<del>XXXXXX</del>	750.00	\$ 1,500
Pony Box Dance Theatre	750.00	<del>XXXXXX</del>	750.00	\$ 1,500
South Coast Chorale	500.00	<del>XXXXXX</del>	500.00	\$ 1,000
South Coast Dance Arts Alliance	500.00	<del>XXXXXX</del>	500.00	\$ 1,000
				\$ 35,000.00

<b>SUB TOTAL GRANT AWARDS FOR 2015-16</b>	\$68,110.00	\$38,610.00	\$57,280.00	\$ 164,000.00
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Monthly Microgrant Awards				\$ 26,000.00
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<b>TOTAL GRANT AWARDS FOR 2015-16</b>				\$ 190,000.00
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