

AGREEMENT

34463

THIS AGREEMENT is made and entered in duplicate as of December 8, 2016 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 December 6, 2016, by and between the PUBLIC CORPORATION FOR THE ARTS OF THE CITY OF LONG BEACH, a California nonprofit corporation, doing business as ARTS COUNCIL FOR LONG BEACH, with a place of business at 350 Elm Avenue, 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 City 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 of Four Hundred Four Thousand Three Hundred Dollars (\$404,300) during the City's fiscal year 2016-2017 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 Three Hundred Dollars (\$164,300); and (2) to fund a community arts grant program in the amount of One Hundred Ninety Thousand Dollars (\$190,000), as shown on Exhibit "B" attached hereto.

1 In addition to the above, the City of Long Beach shall provide to PCA a one-
2 time Challenge Grant in an amount up to Fifty Thousand Dollars (\$50,000). The
3 Challenge Grant is intended to provide an incentive for private contributions to the
4 Arts Council whereby the City shall match all the donations on a one-to-one basis
5 for contributions received October 1, 2016 to September 30, 2017 from non-
6 governmental sources to support initiatives for artist sustainability and professional
7 development, efforts for arts equity in underserved communities, and strategies
8 that increase marketing of the arts and cultural community of Long Beach, as
9 described on Exhibit "A-1" attached hereto and incorporated herein.

10 The organizations and artists shown on Exhibit "B" as receiving
11 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,
12 Level II", and "Community Projects Grants" must apply for support and
13 successfully meet PCA's established criteria for support. City shall pay Three
14 Hundred Fifty-Four Thousand Three Hundred Dollars (\$354,300) to PCA in
15 installments as follows: One Hundred Sixty Thousand Dollars (\$160,000) on City's
16 execution of this Agreement and the remaining amount of One Hundred Ninety-
17 Four Thousand Three Hundred Dollars (\$194,300) in installments of Twenty-Four
18 Thousand Two Hundred Eighty-Seven Dollars and Fifty Cents (\$24,287.50) on the
19 second calendar day of each month beginning January 2017 through August
20 2017.

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

1 execution.

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

7 4. On or before January 2, 2017, April 2, 2017, July 2, 2017 and
8 October 1, 2017, PCA shall submit to City a performance report of its activities, which
9 report shall include a statement of all arts and cultural groups and artists to whom funds
10 were distributed during the preceding three-month period and certification that each such
11 group or artist met the provisions of this Agreement. PCA shall require that the arts and
12 cultural groups listed in Exhibit "B" and with which PCA has an agreement shall submit
13 an interim and final report statement to PCA, setting forth the group's financial condition
14 and disclosure of all expenses, revenues, and fund balances relating to funds given to
15 said groups hereunder. These statements shall be prepared and submitted on a
16 schedule that will permit them to be reviewed by the City upon request.

17 5.

18 A. PCA shall prepare and file with City a complete annual
19 financial report no later than November 15, 2017, covering the period October 1,
20 2016 through September 30, 2017 and accounting for the Three Hundred Fifty-
21 Four Thousand Three Hundred Dollars (\$354,300) allocated to PCA under Section
22 2 hereof. At that time, PCA shall return to City any revenues undistributed or
23 unexpended by it on or prior to September 30, 2017. Said financial report shall be
24 certified by PCA's senior executive officer to indicate that all expenditures are
25 supported by receipts, invoices, vouchers or other appropriate documentation and
26 that such expenditures were made in accordance with this Agreement. PCA shall
27 maintain books, financial records and files as necessary to support its certified
28 financial statements. The City Auditor and other appropriate City personnel shall

1 have the right to examine and audit the statements and supporting books, records
2 and files for three years following the expiration or sooner termination of this
3 Agreement.

4 B. Notwithstanding anything to the contrary herein, the City
5 Manager may approve the retention by PCA of funds allocated to specific arts and
6 cultural groups and artists during 2016-2017 and not spent by September 30,
7 2017, so long as he finds that adequate progress and timely completion of the
8 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly
9 status reports on such projects and shall expedite completion in a form satisfactory
10 to the City Manager.

11 C. On or before October 30, 2017, PCA shall secure from each
12 arts and cultural group identified in Exhibit "B" a comprehensive annual financial
13 statement for the period October 1, 2016 through September 30, 2017. Said
14 financial statement shall be reviewed, audited and approved by each group's
15 board, and shall be forwarded to the City Manager, together with a copy of the
16 applicable report based on said review, or part of the annual financial statement.

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

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

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

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

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

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

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

1 by A.M. Best Company:

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

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

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

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

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

1 any insurance required herein has been voided by the insurer or cancelled by the
2 insured.

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

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

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

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

25 13. This Agreement contemplates the unique role and responsibilities of
26 PCA and the parties acknowledge that a substantial inducement to City for entering this
27 Agreement was and is that uniqueness. As a result, PCA shall not assign its rights or
28 delegate its duties hereunder, or any interest herein, or any portion hereof, without the

1 prior written consent of City. Any attempted assignment or delegation shall be void, and
2 any assignee or delegate shall acquire no right or interest by reason of such attempted
3 assignment or delegation. PCA shall not subcontract any portion of the performance
4 required hereunder. Nothing in this Section 13 shall prevent PCA from employing as
5 many employees as PCA deems necessary for performance of this Agreement.

6 14. Any notice required hereunder or desired to be given by either party
7 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first
8 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California
9 90802 Attn: City Manager and to PCA at the address first shown herein. Change of
10 address shall be given in the same manner as stated herein. Notice shall be deemed
11 given on the date deposited in the mail or on the date personal delivery is made,
12 whichever first occurs.

13 15. The term of this Agreement shall begin at 12:01 a.m. on October 1,
14 2016, and shall terminate at midnight on September 30, 2017. Either party may
15 terminate this Agreement by giving thirty (30) days prior notice to the other party. The
16 complete annual financial report required by Section 5 shall be filed no later than
17 November 15, 2016, and any revenues to be returned shall be returned at the time of
18 said filing, unless otherwise allocated, with the approval of the City Manager.

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

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

26 18. PCA, by executing this Agreement, certifies that, at the time PCA
27 executes this Agreement and during the term hereof, PCA does not and will not perform
28 hereunder in any manner which would create a conflict, whether monetary or otherwise,

1 as between the interests of City and the interests of any recipient of funds hereunder.

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

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

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

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

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

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

PUBLIC CORPORATION FOR THE ARTS
OF THE CITY OF LONG BEACH, a
California nonprofit corporation, doing
business as ARTS COUNCIL FOR LONG
BEACH

December 14, 2016

By [Signature]
Name: Graciela Suarez
Title: Executive Director

December 14, 2016

By [Signature]
Name: Tasha W. Hunter
Title: President

"PCA"

CITY OF LONG BEACH, a municipal
corporation

Dec. 27, 2016

By [Signature]
City Manager
Assistant City Manager

"City"

This Agreement is approved as to form on 12/16, 2016.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Exhibit A

PCA Operating Budget FY 2016-17: October 1, 2016 through September 30, 2017

Total Budget									
Staff Costs:	FY 2016/17		Admin		Fundraising		Grants & Training		Notes:
Admin Salaries & Benefits	98,904	13.70%	98,904	13.70%	-	0.00%	-	0.00%	City Support: Administrative Manager
Percentage of total budget									74,155.00 10.27%
Operations									
Advocacy	-		-						
Audit/Legal Fees	10,000		10,000						-
Bank/Payroll/Serv	2,500		2,500						1,075.00
Equipment/Computers	7,500		7,500						3,225.00
Fundraising (Development)	20,000				20,000				
Website	576		576						
Insurance	4,500		4,500						
Maintenance	2,000		2,000						
Memberships	-		-		-				2,000.00 Property / Liability
Meetings/Travel/Conferences	2,000		2,000						
Miscellaneous-License etc	1,000		1,000						
Outside Consultants	33,000		33,000						
Postage	762		762						
Printing + Stationery Supplies	1,500		1,500						
Rent	8,564		8,564						
Parking	1,500		1,500						
Supplies	2,500		2,500						645.00
Telephone & Internet	3,000		3,000						1,075.00
Employee Incentive	7,000		7,000						2,290.00
Total Operations	107,902		87,902		20,000		-		32,638
Percentage of total budget	14.94%		12.17%		2.77%		0.00%		4.52%
Programs									
Allocations-Granting Program	194,150		-						
Special Events Program/Marketing	88,730		-						
Arts Learning	59,785		-						
Public Art	48,360		-						
Program Administration	243,966		-		3,955		57,508		107,507.78 50K Marketing Match here
Program Total:	634,991		-		3,955		247,508		297,508
percentage of revenue of total budget	87.93%		0.00%		0.55%		34.27%		41.20%
Total Expenses-PCA & PA	841,797		186,806		23,955		247,508		404,300
Percentage of total budget	100.00%		25.87%		3.32%		34.27%		55.99%
	116.57%		25.87%		3.32%		34.27%		55.99%
	116.57%								

Exhibit A-1

City of Long Beach Challenge grant for Arts Council for Long Beach Fiscal Year 2016-2017

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, 2016 to September 30, 2017 from private and public sources that support initiatives for artist sustainability and professional development, efforts for arts equity in underserved communities, and strategies that increase arts marketing projects.

Challenge Grant Provisions:

1. Donations should be received from individual donors, foundations, corporations to support artist sustainability and professional development, efforts for arts equity in underserved communities, and strategies that increase arts marketing projects. The City will match on a one-to-one basis. The City will not match donations 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 to support initiatives for artist sustainability and professional development, efforts for arts equity in underserved communities, and strategies that increase arts marketing projects for Long Beach during the fiscal year beginning October 1, 2016 and ending on September 30, 2017. All evidence must be submitted to the City Manager's Office no later than October 2, 2017. The Arts Council can submit evidence to the City at the same time its installment invoice is given to the City for the 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 grants funds not utilized for the intended purpose by September 30, 2018 (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 be used in any way to determine compensation or bonuses.

**2016-2017 Grant Awards
Exhibit B**

	1st payment 1/15/17	2nd payment 5/15/17	3rd payment 11/15/17	Total Award
ARTIST FELLOWSHIP	100%	0%	0%	
Angela Willcox	\$4,000.00			\$ 4,000
Dave Van Patten	\$3,500.00			\$ 3,500
Norma Haas Rosen	\$3,000.00			\$ 3,000
Bruna Massadas	\$1,500.00			\$ 1,500
	\$12,000.00			\$ 12,000.00

OPERATING GRANTS, LEVEL I (\$250K-\$1M budge	33%	33%	34%	
Art Theatre	987.18	987.18	1,017.10	\$ 2,991.46
Long Beach Playhouse	1,212.82	1,212.82	1,249.57	\$ 3,675.21
Khmer Arts Academy	1,100.00	1,100.00	1,133.33	\$ 3,333.33
	3,300.00	3,300.00	3,400.00	\$ 10,000.00

OPERATING GRANTS, LEVEL II (budgets >\$1M)	33%	33%	34%	
Arts & Services for Disabled, Inc.	5,772.75	5,772.75	5,947.68	\$ 17,493.19
International City Theatre	6,013.29	6,013.29	6,195.51	\$ 18,222.10
Long Beach Opera	5,989.23	5,989.23	6,170.72	\$ 18,149.18
Long Beach Symphony Orchestra	6,638.67	6,638.67	6,839.84	\$ 20,117.17
Museum of Latin American Art	6,398.13	6,398.13	6,592.02	\$ 19,388.28
Musical Theatre West	4,497.93	4,497.93	4,634.23	\$ 13,630.10
	35,310.01	35,310.01	36,380.01	\$ 107,000.02

COMMUNITY PROJECT GRANTS	50%		50%	
Cambodia Town, Inc.	2,500.00		2,500.00	\$ 5,000
Homeland Cultural Center	2,250.00		2,250.00	\$ 4,500
Long Beach Camerata Singers	2,000.00		2,000.00	\$ 4,000
The LGBTQ Center Long Beach	2,000.00		2,000.00	\$ 4,000
Carpenter Performing Arts Center	1,750.00		1,750.00	\$ 3,500
The Rock Club Music is the Remedy	1,750.00		1,750.00	\$ 3,500
Pony Box Dance Theatre	1,250.00		1,250.00	\$ 2,500
Cambodia Town Film Festival	1,250.00		1,250.00	\$ 2,500
Teatro Jornalero Sin Fronteras	750.00		750.00	\$ 1,500
South Coast Dance Arts Alliance	500.00		500.00	\$ 1,000
South Coast Chorale	500.00		500.00	\$ 1,000
University Art Museum	500.00		500.00	\$ 1,000
ARTEExchange	500.00		500.00	\$ 1,000
	17,500.00		17,500.00	\$ 35,000.00

SUB TOTAL GRANT AWARDS FOR 2015-16	\$68,110.01	\$38,610.01	\$57,280.01	\$ 164,000.02
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Monthly Microgrant Awards \$ 26,000.00

TOTAL GRANT AWARDS FOR 2015-16				\$ 190,000.02
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