

36263

GRANT AGREEMENT

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2 This Grant Agreement ("Agreement") is made and entered into by and
3 between the CITY OF LONG BEACH ("City"), a municipal corporation, with its principal
4 place of business at 411 West Ocean Blvd., Long Beach, California 90802, and the BIXBY
5 KNOLLS BUSINESS IMPROVEMENT ASSOCIATION, a nonprofit corporation organized
6 under the laws of the State of California ("Grantee"), with its principal place of business at
7 4321 Atlantic Avenue, Long Beach, California 90807, pursuant to a minute order adopted
8 by the Long Beach City Council at its meeting on August 24, 2021.

RECITALS

9
10 WHEREAS, this Agreement is executed in connection with one-time funding
11 approved by the Long Beach City Council (the "Grant") in the amount of \$200,000 ("Grant
12 Commitment Amount") made by City to Grantee as a part of City's ongoing efforts to
13 provide programs and services that revitalize business districts and support economic
14 development; and

15 WHEREAS, Grantee has the mission of promoting business activity and
16 enhancing the quality of the overall environment in the Bixby Knolls commercial area of
17 Long Beach; and

18 WHEREAS, maintenance and increase in business activity and improvement
19 in the quality of the overall environment will serve to maintain and increase the tax revenue
20 derived by City from the Bixby Knolls area and improve the local economy; and

21 WHEREAS, City and Grantee previously entered into an Agreement for Long
22 Beach Redevelopment Agency funding that supported economic development and
23 commenced on August 3, 2009 and terminated on September 30, 2021; and

24 WHEREAS, Grantee is losing a source of revenue that will impact its ability
25 to sustain its existing programming and operations; and

26 WHEREAS, the Grant is being made by City to Grantee in order to provide
27 seed funds for the planning and development of additional revenue sources that further
28 Grantee's mission; and

1 WHEREAS, payments may only be spent on studies, business owner,
2 property owner, and community outreach, and the implementation of new revenue sources
3 for Grantee that can replace or enhance past Redevelopment Agency funding.

4 AGREEMENT

5 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
6 conditions in this Agreement, the parties agree as follows:

7 1. Grantee's Representations and Warranties. To induce City to enter
8 into this Agreement and to make the Grant, Grantee makes the following representations
9 and warranties:

10 1.1 Capacity. Grantee has the full power, authority, and legal right
11 to execute and deliver, and to perform and observe the provisions of this Agreement,
12 and any other document, agreement, certificate, or instrument which may be
13 executed in connection with the Grant (collectively, the "Grant Documents"), and to
14 carry out the transactions contemplated in the Grant Documents.

15 1.2 Authority and Enforceability. Grantee's execution, delivery,
16 and performance of this Agreement and the other Grant Documents have been duly
17 authorized by all necessary corporate or other business entity action and do not and
18 shall not require any registration with, consent, or approval of, notice to, or any
19 action by any person, entity or government authority. This Agreement and the other
20 Grant Documents, when executed and delivered by Grantee, shall constitute the
21 legal, valid, binding, and joint and several obligations of Grantee enforceable in
22 accordance with their respective terms.

23 1.3 Compliance with Other Instruments. The execution and
24 delivery of this Agreement and the other Grant Documents and compliance with
25 their respective terms, shall not result in a breach of any of the terms or conditions
26 of, or result in an occurrence of an event for which any holder or holders of
27 indebtedness may declare the same due and payable under, any indenture,
28 agreement, order, judgment, or instrument to which Grantee is a party or by which

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Grantee may be bound or affected.

1.4 Compliance with Law. The execution and delivery of this Agreement and the other Grant Documents do 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 Grantee is subject.

1.5 No Untrue Statements. All statements, representations, and warranties made by Grantee in this Agreement or any other Grant Document (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. Grantee understands that 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 Grantee's Covenants.

2.1 Grant Conditions. City shall disburse funds to Grantee in advance no later than thirty (30) days after City receives from Grantee (i) written request for such funds, (ii) an implementation plan in form and content reasonably acceptable to City covering anticipated costs and eligible expenses as described in Section 2.3 of this Agreement, and (iii) proposals, scopes of work, or quotes for professional services to be delivered by consultants. City shall reimburse eligible expenses within thirty (30) days after City receives from Grantee paid invoices, receipts, or other proof of expenditure reasonably required by City for expenses eligible for reimbursement as described in Section 2.3 of this Agreement. City will not advance or reimburse any expenses that are not eligible under this Agreement. The Grant Commitment Amount shall be paid to Grantee in four or more separate payments, none of which shall exceed \$50,000. After the first payment, all subsequent payments shall be conditioned upon City receiving proof of expenditure

1 of all previous Grant payments received by Grantee.

2 2.2 Grant Expenditures. Grantee shall only expend Grant
3 proceeds on costs in connection with the eligible uses of grant funding as described
4 in Section 2.3 of this Agreement. Grantee shall keep documents and records
5 evidencing such expenditures in its possession for at least three (3) years after the
6 last of such Grant funds are expended, and shall allow City and its auditors
7 reasonable access to such documents and records for purposes of inspecting the
8 same to determine compliance with Grantee's obligations under this Agreement and
9 the other Grant Documents. The provisions of this Section 2.2 shall survive
10 termination of this Agreement.

11 2.3 Eligible Uses of Grant Funding. City agrees to provide funding
12 to Grantee to develop and implement plans that create sustainable revenue sources
13 for Grantee. Eligible uses of Grant funding include the following:

14 2.3.1 Hiring consultants to complete outreach to commercial
15 property owners, complete engineering studies, and create a plan that can
16 lead to the formation of a Property and Business Improvement District.

17 2.3.2 Compensating staff and/or independent contractors to
18 conduct outreach to business owners in commercial areas in close proximity
19 to the Bixby Knolls Parking and Business Improvement Area ("PBIA") to
20 inform a potential expansion of the boundaries of the existing PBIA.

21 2.3.3 Hiring consultants to study and propose other revenue
22 generation opportunities, such as special events, contracts for service, fund
23 development for the Bixby Knolls Community Foundation, and related
24 expenses.

25 2.3.4 Hiring consultants to develop a communications strategy
26 that can (a) assist with building consensus from stakeholders on new revenue
27 generation strategies and (b) communicate the benefits of the sustaining the
28 work of the Grantee.

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2.3.5 Administrative expenses that are required to appropriately account for any funds provided under this Agreement and to cover overhead costs associated with studying and implementing new revenue sources, such as managing consultants and contracts; provided, however, that such administrative and overhead expenses and costs shall in no event comprise more than ten percent (10%) of the Grant Commitment Amount.

2.4 Grantee Cooperation. Grantee shall make a good faith effort to continue to work with City and other community partners to implement the “Blueprint for Economic Development” adopted by the Long Beach City Council.

3. Term. Except for those provisions which expressly survive termination, the term of this Agreement shall expire, and City shall have no further obligation to fund the Grant Commitment Amount, in the event that the Grant Conditions are not satisfied on or before September 30, 2023.

4. Default and Remedies.

4.1 Events of Default. Grantee shall be in default under this Agreement and the other Grant Documents if any of the following events (each, an “Event of Default”) occurs (a) the failure of Grantee to perform or comply with any obligation hereunder or under the other Grant Documents within thirty (30) days of receiving written notice of such failure from City; or (b) the failure to be true in any material respect when made of any representation or warranty of Grantee contained herein or in the other Grant Documents.

4.2 City’s Rights and Remedies. Subject to Grantee’s right to notice of default and right to cure the default(s), if an Event of Default occurs, City has the following rights and remedies (“Rights and Remedies”):

4.2.1 Declare a Default. City may declare this Agreement in default.

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4.2.2 Terminate the Grant. City may terminate the Grant, make no further payments hereunder, and may seek reimbursement of the Grant from Grantee.

4.2.3 Indemnity. Grantee shall indemnify and shall defend and save harmless, City and City's boards, and the officers, directors, employees and agents of City (for the purposes of this Subsection, collectively the "City"), from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses harmless from any liability, claim, loss, cost, legal expenses, incurred by or alleged against City arising from or related to the Grant or Grantee's actions or omissions under this Agreement. The provisions of this Section 4.2.3 shall survive termination of this Agreement.

4.2.4 Remedies Cumulative. City may (but is not required to) exercise any or all of the rights under this Agreement. All of City's 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 delays in exercising or fails to exercise any of its rights under this Agreement, that delay or failure shall not constitute a waiver of any City rights or of any breach, default, or failure of condition under this Agreement. No waiver by City of any of its 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 City.

5.2 Entire Agreement. This Agreement and the other Grant Documents are the entire understanding between City and Grantee about the Grant, and may not be modified, amended, or terminated except by written agreement signed by City and Grantee.

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5.3 Assignment. This Agreement inures to and binds the heirs, legal representatives, successors, and assigns of Grantee and City; provided, however, that Grantee 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 may be withheld in City's sole and absolute discretion.

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.

Grantee: _____

City: City of Long Beach
411 W. Ocean Blvd., 10th Floor
Long Beach, CA 90802
Attn: Economic Development Director

5.5 No Third-Party Beneficiary. This Agreement is for the sole benefit of City and Grantee 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

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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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 enforce able according to the laws of the State of California for all purposes.

5.7 Time Is of the Essence. Time is of the essence with respect to all obligations of Grantee under 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.

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

BIXBY KNOLLS BUSINESS IMPROVEMENT ASSOCIATION, a California nonprofit corporation

01-18, 2021

By [Signature]
Name Anthony L. Wingfield
Title President - BK BIA

01-18, 2021

By [Signature]
Name Crystal Rogers
Title BK BIA Treasurer

"Grantee"

CITY OF LONG BEACH, a municipal corporation

March 23, 2021²

By [Signature]
City Manager

"City"

This Agreement is approved as to form on Feb. 22, 2021².

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664