

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 AGREEMENT

2 **32410**

3 THIS AGREEMENT is made and entered in duplicate as of November 18,  
4 2011 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 October 4, 2011, 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 not to exceed Three Hundred Fifty-Four Thousand Three Hundred Dollars  
22 (\$354,300) during the City's fiscal year 2011-2012 to provide financial support in  
23 the amounts shown on Exhibit "A", attached hereto and incorporated herein by this  
24 reference: (1) to offset PCA operating budget costs including administration, staff  
25 coordination, and fundraising activities, in the amount of One Hundred Thirty-Four  
26 Thousand Eight Hundred Seventy Dollars (\$134,870); and (2) for grants in the  
27 amount of Two Hundred Nineteen Thousand Four Hundred Thirty Dollars  
28 (\$219,430), as shown on Exhibit "B" attached hereto.

1           The organizations and artists shown on Exhibit "B" as receiving  
2 "Professional Artist Fellowships", "Operating Grants, Level I", "Operating Grants,  
3 Level II", "Community Projects Grants", and "Neighborhood Project Grants" must  
4 apply for support and successfully meet PCA's established criteria for support.  
5 City shall pay Three Hundred Fifty Four Thousand Three Hundred Dollars  
6 (\$354,300) to PCA in installments as follows: One Hundred Sixty Thousand  
7 Dollars (\$160,000) on City's execution of this Agreement and the remaining  
8 amount of One Hundred Ninety-Four Thousand Three Hundred Dollars (\$194,300)  
9 in installments of Twenty Four Thousand Two Hundred Eighty Seven Dollars and  
10 Fifty Cents (\$24,287.50) each on January 2, 2012, February 2, 2012, March 2,  
11 2012, April 2, 2012, May 2, 2012, June 4, 2012, July 2, 2012 and August 2, 2012.

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

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

26           4. On or before January 2, 2012, April 2, 2012, July 2, 2012 and  
27 October 1, 2012, PCA shall submit to City a performance report of its activities, which  
28 report shall include a statement of all arts and cultural groups and artists to whom funds

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

8 5.

9 A. PCA shall prepare and file with City a complete annual  
10 financial report no later than November 15, 2012, covering the period October 1,  
11 2011 through September 30, 2012 and accounting for the Three Hundred Fifty-  
12 Four Thousand Three Hundred Dollars (\$354,300) allocated to PCA under Section  
13 2 hereof. At that time, PCA shall return to City any revenues undistributed or  
14 unexpended by it on or prior to September 30, 2012. Said financial report shall be  
15 certified by PCA's senior executive officer to indicate that all expenditures are  
16 supported by receipts, invoices, vouchers or other appropriate documentation and  
17 that such expenditures were made in accordance with this Agreement. PCA shall  
18 maintain books, financial records and files as necessary to support its certified  
19 financial statements. The City Auditor and other appropriate City personnel shall  
20 have the right to examine and audit the statements and supporting books, records  
21 and files for three years following the expiration or sooner termination of this  
22 Agreement.

23 B. Notwithstanding anything to the contrary herein, the City  
24 Manager may approve the retention by PCA of funds allocated to specific arts and  
25 cultural groups and artists during 2011-2012 and not spent by September 30,  
26 2012, so long as he finds that adequate progress and timely completion of the  
27 projects can be demonstrated by PCA to his satisfaction. PCA shall make monthly  
28 status reports on such projects and shall expedite completion in a form satisfactory

1 to the City Manager.

2 C. On or before October 30, 2012, PCA shall secure from each  
3 arts and cultural group identified in Exhibit "B" a comprehensive annual financial  
4 statement for the period October 1, 2011 through September 30, 2012. Said  
5 financial statement shall be reviewed, audited and approved by each group's  
6 board, and shall be forwarded to the City Manager, together with a copy of the  
7 applicable report based on said review, or part of the annual financial statement.

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

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

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

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

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

26 11. PCA shall with respect to this Agreement indemnify and hold  
27 harmless City, its officials, employees and agents (collectively in this Section "City") from  
28 and against any and all liability, claims, demands, damage, loss, causes of action,

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

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

20           (a) Commercial general liability insurance (equivalent in scope to ISO  
21 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million  
22 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general  
23 aggregate. Such coverage shall include but not be limited to broad form  
24 contractual liability, cross liability, independent contractors liability, and products  
25 and completed operations liability. The City, its officials, employees and agents  
26 shall be named as additional insureds by endorsement (on City's endorsement  
27 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG  
28 20 26 11 85), and this insurance shall contain no special limitations on the scope

1 of protection given to the City, its officials, employees and agents.

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

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

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

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

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

24 Prior to the start of performance, PCA shall deliver to City certificates of  
25 insurance and required endorsements for approval as to sufficiency and form. The  
26 certificate and endorsements for each insurance policy shall contain the original signature  
27 of a person authorized by that insurer to bind coverage on its behalf. In addition, PCA,  
28 shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to

1 City certificates of insurance and endorsements evidencing renewal of such insurance.  
2 City reserves the right to require complete certified copies of all policies of PCA and  
3 PCA's contractors and subcontractors, at any time. PCA shall make available to City's  
4 Risk Manager or designee all books, records and other information relating to the  
5 insurance coverage required herein, during normal business hours.

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

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

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

24 14. Any notice required hereunder or desired to be given by either party  
25 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
26 class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California  
27 90802 Attn: City Manager and to PCA at the address first shown herein. Change of  
28 address shall be given in the same manner as stated herein. Notice shall be deemed

1 given on the date deposited in the mail or on the date personal delivery is made,  
2 whichever first occurs.

3           15. The term of this Agreement shall begin at 12:01 a.m. on October 1,  
4 2011, and shall terminate at midnight on September 30, 2012. Either party may  
5 terminate this Agreement by giving thirty (30) days prior notice to the other party. The  
6 complete annual financial report required by Section 5 shall be filed no later than  
7 November 15, 2012, and any revenues to be returned shall be returned at the time of  
8 said filing, unless otherwise allocated, with the approval of the City Manager.

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

11           17. The acceptance of performance or the payment of any money by  
12 City shall not operate as a waiver of any provision of this Agreement, or of any right to  
13 damages or indemnity stated in this Agreement. The waiver of any breach of this  
14 Agreement shall not constitute a waiver of any other or subsequent breach of this  
15 Agreement.

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

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

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

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

28           22. In the event that there is any legal proceeding between the parties to



1 enforce or interpret this Agreement or to protect or establish any rights or remedies  
2 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
3 reasonable attorney's fees.

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

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

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

10 PUBLIC CORPORATION FOR THE ARTS  
11 OF THE CITY OF LONG BEACH, a  
12 California nonprofit corporation, doing  
13 business as ARTS COUNCIL FOR LONG  
14 BEACH

11 Nov. 30, 2011

12 By [Signature]  
13 Name: G. LARRY RICE  
14 Title: PRESIDENT

15 11 30, 2011

16 By [Signature]  
17 Name: KAMRAN AGADI  
18 Title: Past President

19 "PCA"

20 CITY OF LONG BEACH, a municipal  
21 corporation

22 12-13, 2011

23 By [Signature] **Assistant City Manager**  
24 City Manager **EXERCISED PURSUANT**  
25 **TO SECTION 301 OF**  
26 **THE CITY CHARTER.**

27 "City"

28 This Agreement is approved as to form on 12/13, 2011.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy

**Exhibit A**  
**PCA Operating Budget FY 2011: October 1,2011 through September 30, 2012**

Total Budget

Staff Costs:	FY 2011-12	Admin	Fundraising	Grants & Training	Marketing	Neighborhoods	Design/ Public Art	City Support	Notes:
Admin Salaries & Benefits	134,870	134,870						134,870.00	Executive Director; Administrative Manager
Percentage of total budget	17.06%	17.06%	0.00%	0.00%	0.00%	0.00%	0.00%	17.06%	
Operations									
Advocacy	-	-							
Audit/Legal Fees	15,000	15,000							
Bank/Payroll/Serv	3,400	3,400							
Equipment/Computers	15,000	15,000							
Fundraising (Development)	35,000		35,000						
Insurance	6,000	6,000						2,000.00	Property / Liability
Maintenance	6,500	6,500							
Memberships	500	500	-	-					
Meetings/Travel/Conferences	3,000	3,000							
Miscellaneous-License etc	-	-							
Outside Consultants	32,000	32,000						29,930.00	Accounting;
Postage	600	600							
Printing + Stationery Supplies	1,500				1,500				
Rent	15,095	15,095							
Parking	3,500	3,500							
Supplies	5,000	5,000							
Telephone & Internet	4,000	4,000							
Reserve Fund	-	-							
<b>Total Operations</b>	<b>146,095</b>	<b>109,595</b>	<b>35,000</b>	<b>-</b>	<b>1,500</b>	<b>-</b>	<b>-</b>	<b>31,930</b>	
Percentage of total budget	18.48%	13.86%	4.43%	0.00%	0.19%	0.00%	0.00%	4.04%	
<b>Programs</b>									
Allocations-Granting Program	190,400			2,900				187,500.00	
Special Events Program/Marketing	31,460				31,460				
Arts Learning	111,411					111,411			
Public Art	71,725						71,725.00		
Program Administration	104,779	-	-	28,930	-	58,469	17,280.00	-	
<b>Program Total:</b>	<b>509,775</b>	<b>-</b>	<b>-</b>	<b>31,830</b>	<b>31,460</b>	<b>169,880</b>	<b>89,005</b>	<b>187,500</b>	
percentage of revenue of total budg	64.47%	0.00%	0.00%	4.03%	3.98%	21.48%	11.26%	23.71%	
<b>Total Expenses-PCA &amp; PA</b>	<b>790,740</b>	<b>244,465</b>	<b>35,000</b>	<b>31,830</b>	<b>32,960</b>	<b>169,880</b>	<b>89,005</b>	<b>354,300</b>	
Percentage of total budget	100.00%	30.92%	4.43%	4.03%	4.17%	21.48%	11.26%	44.81%	

**2011-2012 Grant Awards  
Exhibit B**

	1st payment	2nd payment	3rd payment	Total Award	
<b>PROFESSIONAL ARTIST FELLOWSHIP</b>	100%	0%	0%		
Cynthia K Evans	\$1,500.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$1,500.00	
Giuseppa Pia Pizzo	\$1,500.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$1,500.00	
Jocelyn Foye	\$1,500.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$1,500.00	
Ramon Rodriguez	\$1,500.00	<del>XXXXXX</del>	<del>XXXXXX</del>	\$1,500.00	
					\$ 6,000.00
<b>OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)</b>	33%	33%	34%		
Khmer Arts Academy	2,454.77	2,454.77	2,529.15	\$ 7,439	
Long Beach Playhouse	2,165.23	2,165.23	2,230.85	\$ 6,561	
					\$ 14,000.00
<b>OPERATING GRANTS, LEVEL II (budgets &gt;\$1M)</b>	33%	33%	34%		
International City Theatre	7,177.01	7,177.01	7,394.49	\$ 21,749	
Long Beach Opera	8,443.54	8,443.54	8,699.40	\$ 25,586	
Long Beach Symphony Orchestra	7,138.63	7,138.63	7,354.95	\$ 21,632	
Museum of Latin American Art	7,944.60	7,944.60	8,185.35	\$ 24,075	
Musical Theatre West	7,906.22	7,906.22	8,145.81	\$ 23,958	
					\$ 117,000.00
<b>COMMUNITY PROJECT GRANTS</b>	33%	33%	34%		
Arts and Services for the Disabled	495.00	495.00	510.00	\$1,500.00	
Camerata Singers of Long Beach	1,650.00	1,650.00	1,700.00	\$5,000.00	
Carpenter Performing Arts Center	660.00	660.00	680.00	\$2,000.00	
CSULB- Earl Burns Japanese Garden	990.00	990.00	1,020.00	\$3,000.00	
CSULB- University Art Museum	990.00	990.00	1,020.00	\$3,000.00	
Historical Society of Long Beach	990.00	990.00	1,020.00	\$3,000.00	
Homeland Cultural Center	660.00	660.00	680.00	\$2,000.00	
Jazz Angels	825.00	825.00	850.00	\$2,500.00	
Regina Klenjoski Dance Company	1,155.00	1,155.00	1,190.00	\$3,500.00	
					\$ 25,500.00
Ongoing Micro Grants, Technical Assistance and Professional Development				\$25,000.00	\$ 28,000.00
<b>TOTAL GRANT AWARDS FOR 2011-2012</b>	<b>\$49,725.99</b>	<b>\$51,645.00</b>	<b>\$53,210.68</b>	<b>\$187,500.00</b>	<b>\$ 190,500.00</b>
Grants Management - Part Time Staff					\$ 28,930.00
<b>TOTAL GRANTS PROGRAM COSTS</b>					<b>\$ 219,430.00</b>



SIGNATURE AUTHORITY RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE PUBLIC CORPORATION FOR THE ARTS (dba, ARTS COUNCIL FOR LONG BEACH)  
a California nonprofit corporation

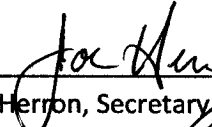
The undersigned, being the duly elected Secretary of the Arts Council for Long Beach, a California nonprofit corporation (the "Corporation"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Corporation on December 12, 2011, that said resolution was adopted in compliance with the Articles of Incorporation and Bylaws of the Corporation; and that said resolution has not been supplemented, modified, amended or rescinded and is in full force and effect as of the date hereof.

**NOW, THEREFORE, BE IT RESOLVED:** That any officer of the Corporation may sign legal documents, including contracts with the City of Long Beach and other entities as necessary.

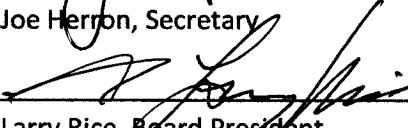
**RESOLVED FURTHER:** That the Executive Director of the Corporation and, subject to the Articles of Incorporation and Bylaws of the Corporation, is delegated all management powers and duties consistent with his position as Executive Director, effective immediately as of December 12, 2011.

The undersigned certifies that he is the President of the Corporation and further certifies that the individual who executed the foregoing Signature Authority Resolution of the Board of Directors of the Corporation is the incumbent Secretary of the Corporation.

Dated: 12/12/11

  
\_\_\_\_\_  
Joe Herron, Secretary

Dated: 12/12/11

  
\_\_\_\_\_  
Larry Rice, Board President