

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

1 REVOCABLE FACILITY USE PERMIT

2 **31918**

3 THIS REVOCABLE FACILITY USE PERMIT is issued by the City of Long
4 Beach ("City"), in duplicate, as of October 20, 2010, pursuant to a minute order adopted
5 by the City council of the City of Long Beach at its meeting on October 19, 2010, to the
6 LONG BEACH PUBLIC LIBRARY FOUNDATION ("Permittee"), subject to and on the
7 terms and conditions stated herein.

8 1. Permission. Subject to and on the terms and conditions of this
9 Permit, the City hereby grants permission to Permittee to use the space on the premises
10 of the Main Library at 101 Pacific Avenue, Long Beach, California 90802 shown on
11 Exhibit "A" attached hereto (the "Site") but does not include Meeting Room #3, and
12 Permittee accepts the Site "as is" without any warranty regarding the condition of the
13 Site.

14 2. Use.

15 A. Permittee shall use the Site only for office space and
16 meetings, and for no other purpose. Permittee's use includes existing water,
17 electrical and gas service on the Site, at no charge for reasonable quantities.
18 However, Permittee shall provide and pay, when due, for the use of any telephone
19 service on the Site.

20 B. Permittee shall not allow the Site to be used by any other
21 person or entity or for any other use than that use which is described above.

22 C. Permittee shall use the Site in a manner that will not create a
23 nuisance and in compliance with all applicable laws, ordinances, rules and
24 regulations relating to its use.

25 D. In its use of the Site, Permittee shall not discriminate on the
26 basis of race, religion, national origin, color, age, sex, sexual orientation, gender
27 identity, AIDS, HIV status, handicap or disability.

28 E. Notwithstanding Permittee's use of the Site, the City retains

1 full and absolute control of the Site and the right of access to the Site at all times.

2 F. Permittee shall provide all furniture, equipment and supplies
3 necessary for its use of the Site.

4 3. Hours and Days of Use. Permittee is granted use of the Site on any
5 day and during any hours that the Main Library is open to the public for regular library
6 business.

7 4. Term and Revocation.

8 A. This Permit shall be effective on December 1, 2010 and shall
9 expire on November 30, 2013 unless revoked or terminated as provided herein,
10 with the option to extend for one (1) additional three (3) year term.

11 B. Notwithstanding anything to the contrary herein, the Director
12 of the Long Beach Public Library ("Director") may revoke this Permit with thirty (30)
13 days prior notice (1) if the Director has knowledge that Permittee has violated or
14 failed to comply with any provision of this Permit; (2) if the Director has a need for
15 the space; or (3) in the interest of safety, health or welfare of the public or in an
16 emergency, or for any other reason as deemed necessary by the City Manager or
17 his/her designee. On revocation, Permittee shall immediately stop its use of the
18 Site and remove its property from the Site.

19 C. In the event the Site becomes unavailable for foundation use,
20 City agrees to cooperate with Foundation to secure another, comparable location
21 for use by Foundation under similar terms.

22 5. Maintenance and Alteration of Site.

23 A. City shall maintain the Site provided, however, that if City fails
24 to maintain the Site, then Permittee's sole and exclusive remedy for such failure or
25 by reason of any condition of the Site shall be the right to terminate this Permit and
26 vacate the Site. City shall not be liable to Permittee for any loss, cost, expense,
27 liability, or damage resulting from its failure to maintain the Site or from Permittee's
28 inability to use the Site.

1 B. Notwithstanding City's duty to maintain the Site, Permittee
2 shall keep the Site in a clean, safe, sanitary condition, free of rubbish, debris,
3 garbage, and litter. Permittee shall immediately correct any health or safety
4 problem at the Site after receipt of notice of same from City.

5 C. Permittee shall not alter, improve or repair the Site.

6 6. Possessory Interest. Permittee acknowledges that use of the Site
7 may create a possessory interest subject to possessory interest taxes and agrees to and
8 shall pay such taxes prior to delinquency.

9 7. No Title. This Permit only grants to Permittee the privilege to use the
10 Site. By this Permit, Permittee does not acquire any right, title or interest of any kind in
11 the Site, including but not limited to a leasehold interest.

12 8. Loss of Property. The City is not and shall not be responsible or
13 liable for the loss by theft, fire, flood, burglary, vandalism or any other cause of
14 Permittee's property or the property of Permittee's invitees on the Site. Permittee hereby
15 waives any claim against the City related to such loss.

16 9. No Assignment. Permittee shall not assign this Permit or any
17 interest in this Permit nor allow the transfer of this Permit, whether by operation of law or
18 otherwise. Any attempted assignment or transfer shall be void and confer no rights or
19 privileges on a purported assignee or transferee.

20 10. No Signs. Permittee shall not erect or install or allow to be erected
21 or installed any signs of any kind in, on or around the Site without the prior written
22 approval of the Director.

23 11. Insurance.

24 A. As a condition precedent to the effectiveness of this Permit,
25 Permittee shall procure and maintain at Permittee's expense during Permittee's
26 use of the Site from an insurance company that is admitted to write insurance in
27 California or from authorized non-admitted insurance companies that have ratings
28 or of equivalent to A:VIII by A.M. Best Company:

1 i. Commercial general liability insurance (equivalent in
2 scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not
3 less than \$1,000,000 per each occurrence and \$2,000,000 general
4 aggregate. This coverage shall include but not be limited to broad form
5 contractual liability, cross liability, independent contractors liability, and
6 products and completed operations liability. City, its boards and
7 commissions, and their officials, employees and agents shall be named as
8 additional insureds by endorsement (on City's endorsement form or on an
9 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26
10 11 85), and this insurance shall contain no special limitations on the scope
11 of protection given to City, its boards and commissions, and their officials,
12 employees and agents. This policy shall be endorsed to state that the
13 insurer waives its right of subrogation against City, its boards and
14 commissions, and their officials, employees and agents.

15 ii. Workers' Compensation insurance as required by the
16 California Labor Code and employer's liability insurance in an amount not
17 less than \$1,000,000. This policy shall be endorsed to state that the insurer
18 waives its right of subrogation against City, its boards and commissions,
19 and their officials, employees and agents.

20 iii. Professional liability or errors and omissions insurance
21 in an amount not less than \$1,000,000 per claim.

22 iv. Commercial automobile liability insurance (equivalent
23 in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto)
24 in an amount not less than \$500,000 combined single limit per accident.

25 B. Any self-insurance program, self-insured retention, or
26 deductible must be separately approved in writing by City's Risk Manager or
27 designee and shall protect City, its officials, employees and agents in the same
28 manner and to the same extent as they would have been protected had the policy

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or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Permittee. Permittee shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Permit expires or is terminated, unless Permittee guarantees that Permittee will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Permit expires or is terminated.

E. Permittee shall require that all contractors which Permittee uses in connection with this Permit maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of the term of this Permit, Permittee shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Permittee shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Permittee and Permittee's contractors, at any time. Permittee shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements

1 shall only be made with the approval of City's Risk Manager or designee. Not
2 more frequently than once a year, City's Risk Manager or designee may require
3 that Permittee, Permittee's contractors change the amount, scope or types of
4 coverages required in this Section if, in his or her sole opinion, the amount, scope
5 or types of coverages are not adequate.

6 H. The procuring or existence of insurance shall not be
7 construed or deemed as a limitation on liability relating to Permittee's performance
8 or as full performance of or compliance with the indemnification provisions of this
9 Permit.

10 I. Notwithstanding anything to the contrary herein, Permittee
11 acknowledges and agrees that this Permit shall not be effective until proof of
12 insurance has been delivered to the Director.

13 12. Indemnification. Permittee shall defend, indemnify and hold
14 harmless the City, its commissions, officials, employees and agents (collectively in this
15 Section "City") from and against all claims, demands, damage, causes of action, losses,
16 liability, costs and expenses (including reasonable attorney's fees) which may be
17 asserted against the City and which is connected in any way with this Permit, except for
18 the gross negligence or willful misconduct of the City. Permittee shall give notice to the
19 City of any claim, demand, damage, cause of action, loss, liability, cost, or expense within
20 ten (10) days.

21 13. No Fee. There is no Permit fee for Permittee's use of the Site in
22 consideration of the fact that Permittee provides a public service to City's Public Library.

23 14. No Hazardous Materials. Permittee shall not bring to or keep at or
24 allow to be brought to or kept at the Site any goods, merchandise, supplies, personal
25 property, materials or items which are in any way hazardous or explosive.

26 15. Miscellaneous.

27 A. The failure or delay of the City to insist on strict compliance
28 with any term or condition of this Permit shall not be deemed a waiver of any right

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or remedy that City may have and shall not be deemed a waiver of any subsequent or other failure to comply.

B. Title to any personal property belonging to Permittee and left on the Site forty-five (45) days after the expiration or revocation of this Permit shall be deemed to have been transferred to the City. The City shall thereafter have the right to remove and to dispose of said property without liability to Permittee or to any person claiming under Permittee, and shall have no duty to account therefore.

C. In any action or proceeding relating to this Permit, the prevailing party shall be entitled to its costs, including reasonable attorney's fees.

D. This Permit shall be governed by and construed in accordance with the laws of the State of California excluding the provisions relating to conflicts of laws. This Permit constitutes the entire understanding between Permittee and the City and supersedes all other agreements, oral or written, with respect to the subject matter herein. Revocation or expiration of this Permit shall not affect rights or liability that accrued prior to such revocation or expiration. This Permit shall not be construed or interpreted against either the City or Permittee as drafter. This Permit is not intended or entered for the purpose of creating any benefit or right for any person or entity other than Permittee.

E. Notwithstanding any language to the contrary herein, if a court of competent jurisdiction deems this Permit to be a lease, then Permittee waives any right of redemption under the law in the event of removal from the Site. Permittee agrees that if the manner or method used by the City in revoking this Permit gives to Permittee a cause of action similar to or based on damages that would otherwise arise in connection with unlawful detainer, then the total amount of damages to which Permittee shall be entitled in any such action shall be One Dollar (\$1.00). Permittee agrees that this Section of the Permit may be filed in any such action and that, when so filed, it shall be a stipulation by Permittee fixing the total damages to which Permittee is entitled in such action and Permittee waives

1 Section 15.C. as the prevailing party.

2 Permittee hereby accepts and agrees to abide by the terms and conditions
3 of this Permit.

4 LONG BEACH PUBLIC LIBRARY
5 FOUNDATION

6 10/30/10, 2010

7 By Thomas Reep
8 Thomas Reep
9 Type or Print Name

10 10-30 -, 2010

11 By Sara Pillet
12 Sara Pillet
13 Type or Print Name

14 "Permittee"

15 CITY OF LONG BEACH, a municipal
16 corporation

17 11.12, 2010

18 By [Signature]
19 [Signature]
20 Assistant City Manager
21 City Manager
22 "City"

23 ~~EXECUTED PURSUANT~~
24 ~~TO SECTION 301 OF~~
25 ~~THE CITY CHARTER.~~

26 This Facility Use Permit is approved as to form on

27 11-2, 2010.

28 ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

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Exhibit A: LBPL Foundation Office Space Floor Plan
Main Library, 101 Pacific Ave., Long Beach, CA

