

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

AGREEMENT

35800

THIS AGREEMENT is made and entered in duplicate as of November 23, 2020 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 November 17, 2020, 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 an amount not to exceed of Four Hundred Four Thousand Eighty-Five Dollars (\$404,085) during the City's fiscal year 2020-2021 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 Two Hundred Thirty-Nine Thousand Three Hundred Dollars (\$239,300); and (2) to fund a community arts grant program in the amount of One Hundred Sixty-Four Thousand Seven Hundred Eighty-Five Dollars (\$164,785), as shown on Exhibit "B" attached hereto.

1 City shall pay Four Hundred Four Thousand Eighty-Five Dollars
2 (\$404,085) to PCA in installments as follows: One Hundred Sixty Thousand Two
3 Dollars (\$160,002), on City's execution of this Agreement and the remaining
4 amount of Two Hundred Forty-Four Thousand Eighty-Five Dollars (\$244,085) in
5 quarterly installments of Eighty-One Thousand Three Hundred Sixty-One Dollars
6 and Fifty Cents (\$81,361) on the second calendar day of January 2021, April 2021
7 and July 2021.

8 B. The organizations and artists shown on Exhibit "B" as
9 receiving "Professional Artist Fellowships", "Operating Grants, Level I", "Operating
10 Grants, Level II", and "Community Projects Grants" must apply for support and
11 successfully meet PCA's established criteria for support. In order to fulfill its
12 obligations as reviewing agency for all City funds allocated to the arts and cultural
13 groups and artists in Exhibit "B", PCA shall enter an agreement with each arts and
14 cultural group and artist, which agreement shall set forth the terms under which
15 the groups and artists will report to PCA regarding their financial status, Long
16 Beach residency status, community outreach efforts and any other information
17 required by PCA to be in compliance with this Agreement. PCA shall submit
18 copies of all executed agreements between PCA and each group and artist to the
19 City Manager within fifteen (15) days after full execution.

20 3. In accordance with the City's Administrative Regulation No. AR9-1
21 Regulation Governing Percent for the Arts Program ("Policy"), PCA shall administer and
22 oversee the Percent for the Arts Program, as described in Exhibit "C", attached hereto
23 and incorporated herein. The City will disburse Percent for the Arts Program funding,
24 separate and in addition to the annual Agreement, each year to the PCA based on
25 calculations of actual Program fees collected from eligible sources from the prior Fiscal
26 Year, pursuant to the Percent for the Arts Policy as described in Exhibit C".

27 4. 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 5. On or before January 2, 2021, April 2, 2021, July 2, 2021 and
5 October 1, 2021, 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 an
10 interim and final report statement to PCA, setting forth the group's financial condition and
11 disclosure of all expenses, revenues, and fund balances relating to funds given to said
12 groups hereunder. These statements shall be prepared and submitted on a schedule
13 that will permit them to be reviewed by the City upon request.

14 6.

15 A. PCA shall prepare and file with City a complete annual
16 financial report no later than November 15, 2021, covering the period October 1,
17 2020 through September 30, 2021 and accounting for the Four Hundred Four
18 Thousand Eighty-Five Dollars (\$404,085) allocated to PCA under Section 2
19 hereof. At that time, PCA shall return to City any revenues undistributed or
20 unexpended by it on or prior to September 30, 2021. 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 2020-2021 and not spent by September 30,
4 2021, 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 November 15, 2021, PCA shall secure from
9 each arts and cultural group identified in Exhibit "B" a comprehensive annual
10 financial statement for the period October 1, 2020 through September 30, 2021.
11 Said 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 411 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 16. The term of this Agreement shall begin at 12:01 a.m. on October 1,
10 2020, and shall terminate at midnight on September 30, 2021. 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, 2021, 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 17. The City Manager or designee shall administer this Agreement and
16 all matters in connection herewith, and his decision shall be final.

17 18. 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 19. 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 20. 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.

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

3 22. 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 23. 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 24. 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 Dec 9, 2020

9 By [Signature]
10 Name: Griselda Suarez
11 Title: Executive Director

12 Dec 9, 2020

13 By [Signature]
14 Name: Brian Tribble
15 Title: Board President

16 "PCA"
17 CITY OF LONG BEACH, a municipal
18 corporation

19 December 16, 2020

20 By [Signature]
21 City Manager

22 EXECUTED PURSUANT
23 TO SECTION 301 OF
24 THE CITY CHARTER

25 "City"
26 This Agreement is approved as to form on Dec 16, 2020.

27 CHARLES PARKIN, City Attorney

28 By [Signature]
Deputy

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**2020-2021 Grant Awards
Exhibit B**

	1st payment	1/15/2021	2nd payment 11/15/2021	Total Award
ARTIST FELLOWSHIP		100%	0%	
Artist 1		\$4,000.00	XXXXXX	\$ 4,000
Artist 2		\$4,000.00	XXXXXX	\$ 4,000
Artist 3		\$4,000.00	XXXXXX	\$ 4,000
Artist 4		\$4,000.00	XXXXXX	\$ 4,000
		\$16,000.00		\$ 16,000.00

OPERATING GRANTS, LEVEL I (\$250K-\$1M budgets)	70%	30%	
Art Theatre	5,600.00	2,400.00	\$8,000
Historical Society of Long Beach	5,600.00	2,400.00	\$ 8,000.00
Khmer Arts Academy	5,600.00	2,400.00	\$ 8,000.00
	16,800.00	7,200.00	\$ 24,000.00

OPERATING GRANTS, LEVEL II (budgets >\$1M)	70%	30%	
Arts & Services for Disabled, Inc.	12,600.00	5,400.00	\$ 18,000.00
	12,600.00	5,400.00	\$ 18,000.00

COMMUNITY ARTS GRANTS	70%	30%	
Infinite Stage	2,800.00	1,200.00	\$ 4,000
Long Beach Community Band (Percent for Arts	2,800.00	1,200.00	\$ 4,000
Long Beach Youth Chorus	2,800.00	1,200.00	\$ 4,000
Literary Women	2,800.00	1,200.00	\$ 4,000
Kontrapunktus	2,800.00	1,200.00	\$ 4,000
Act Out Theater	2,800.00	1,200.00	\$ 4,000
Long Beach Chorale and Chamber Orchestra	2,800.00	1,200.00	\$ 4,000
Cambodia Town Inc.	2,800.00	1,200.00	\$ 4,000
LGBTQ Center of Long Beach	2,800.00	1,200.00	\$ 4,000
South Coast Dance Arts Alliance	2,800.00	1,200.00	\$ 4,000
Hmong Association of Long Beach	2,800.00	1,200.00	\$ 4,000
South Coast Chorale	2,800.00	1,200.00	\$ 4,000
Long Beach Blues Society	2,800.00	1,200.00	\$ 4,000
Rock Club-Music is the Remedy	2,800.00	1,200.00	\$ 4,000
Kleefield Contemporary	2,800.00	1,200.00	\$ 4,000
Pony Box Dance Theatre	2,800.00	1,200.00	\$ 4,000
Carpenter Center of Long Beach	2,800.00	1,200.00	\$ 4,000
Arts Organization 1	2,800.00	1,200.00	\$ 4,000
	50,400.00	21,600.00	\$ 72,000.00

SUB TOTAL GRANT AWARDS FOR 2020-2021	\$95,800.00	\$34,200.00	\$ 130,000.00
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Monthly Microgrant Awards			\$ 34,785.00
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TOTAL GRANT AWARDS FOR 2020-2021			\$ 164,785.00
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Exhibit C

PERCENT FOR THE ARTS

1. Under the City of Long Beach's Percent for the Arts Program (Program), regulated by the City's Administrative Regulation No. AR9-1 Regulation Governing Percent for the Arts Program (Policy), PCA will assume the role of the primary vendor contracted by the City to administer and manage all Program projects. Accordingly, the City and PCA will enter into separate memorandums of understanding (MOU) to define individual project scope of works, timelines, and deliverables and disburse funding on a separate funding schedule separate from this annual Agreement.
2. Program Funding Allocations, Project Identification, and Review, Selection and Approvals of Program commissioned works are in accordance with the City's Percent for the Arts Policy.
3. Acknowledgements: *"Supported in part by the City of Long Beach and Percent for the Arts"* must appear or be stated on all advertisements, programs, publications, displays, web site, social media, in announcements and every other form of public communication for events and projects receiving funding support from the Percent for the Arts Program.
4. Equity: In addition, and pursuant to the City's Percent for the Arts Policy, the PCA will make every effort to equitably solicit public art opportunities to members of all backgrounds, ethnicities, religions, orientation and gender identification. To the extent possible, PCA will also engage new artists to participate in the public art application process. It is the goal of the City to develop high caliber art projects that meet the diverse interests of the residents of Long Beach. The following factors should be taken into account by PCA when reviewing and selecting proposals for new works:
 - i. Public art proposals will reflect input gathered from local community and neighborhood stakeholders through open forums to provide the artist inspiration and potential concepts and themes. Public art shall be compatible with the host community, and public input shall be received and considered as part of the design process.
 - ii. Gathering public input and appropriately transmitting the input to the artist will be the responsibility of the PCA.
 - iii. Throughout process of creating this Policy, City staff and PCA worked closely to ensure PCA will make every effort to equitably solicit public art opportunities to members of all backgrounds, ethnicities, religions, orientation, and gender identification.
 - iv. To the extent possible, PCA will also engage new artists to participate in the public art application process.
5. Roles and Responsibilities are defined in the City's Percent for the Arts Policy.

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