



1 the Long Beach Unified School District Director of Student Support Services and the  
2 City of Long Beach Community Program Specialist) to explore feasibility and  
3 appropriateness of proposed evaluation activities, as well as solicit feedback  
4 regarding additional activities or measures that should be included in the Evaluation  
5 Plan. The final Evaluation Plan shall be submitted to the City for approval no later  
6 than thirty (30) calendar days from the date that this Agreement is executed.

7 B. Upon City's approval of the Evaluation Plan, CSULBRF-MBC  
8 shall execute all related evaluation activities as outlined in such Plan. Throughout  
9 the implementation of evaluation activities, CSULBRF-MBC shall maintain ongoing  
10 communication with the City through the Community Program Specialist assigned  
11 to the grant program, to provide updates regarding the progress and status of the  
12 Evaluation Plan. Upon completion of executing the Evaluation Plan, CSULBRF-  
13 MBC shall prepare a report ("Evaluation Report") containing a detailed overview of  
14 the data collection methods, evaluation activities, evaluation results and findings  
15 regarding the Harvey Milk Park Project. The final Evaluation Report must be  
16 delivered to the City of Long Beach no later than May 1, 2018, unless otherwise  
17 extended by the City at its sole discretion.

18 2. CITY RESPONSIBILITIES. As the fiscal agent and lead for the John  
19 S. and James L. Knight Foundation (Knight) Grant, the City shall provide overall leadership  
20 under the Harvey Milk Park Project. Specifically, the City shall serve as the coordinating  
21 body under the Knight Grant to ensure the attainment of the grant goals, objectives and  
22 outcomes. This includes providing technical support and assistance to all organizations  
23 receiving a sub-award under this grant program.

24 3. FUNDING. City shall pay for these services in the manner described  
25 below, not to exceed Fifteen Thousand Dollars (\$15,000). City shall pay CSULBRF-MBC  
26 in due course of payments following receipt from CSULBRF-MBC and approval by City of  
27 invoices showing the services or task performed for the implementation of a cost  
28 reimbursement budget. Services will be reimbursed to CSULBRF-MBC for project-related

1 expenses. CSULBRF-MBC shall certify on the invoices that CSULBRF-MBC has  
2 performed the services in full conformance with this Agreement and is entitled to receive  
3 payment. Each invoice shall be submitted on agency letterhead, and shall be accompanied  
4 by supporting documentation of services rendered and a progress report indicating the  
5 progress to date of services performed and covered by the invoice, including a brief  
6 statement of any project problems and potential causes of delay in performance, and listing  
7 those services that are projected for performance by CSULBRF-MBC during the next  
8 invoice cycle.

9 4. TERM. The term of this Agreement shall commence at midnight on  
10 July 1, 2016, and shall terminate at 11:59 p.m. on December 31, 2017, unless otherwise  
11 extended by the City at its sole discretion or sooner terminated as provided in this  
12 Agreement, or unless the services or the Project is completed sooner.

13 5. INDEPENDENT CONTRACTOR. In performing its services,  
14 CSULBRF-MBC is and shall act as an independent contractor and not an employee,  
15 representative or agent of City. CSULBRF-MBC shall have control of CSULBRF-MBC's  
16 work and the manner in which it is performed. CSULBRF-MBC shall be free to contract for  
17 similar services to be performed for others during this Agreement. CSULBRF-MBC  
18 acknowledges and agrees that (a) City will not withhold taxes of any kind from CSULBRF-  
19 MBC's compensation; (b) City will not secure workers' compensation or pay unemployment  
20 insurance to, for or on CSULBRF-MBC's behalf; and (c) City will not provide and  
21 CSULBRF-MBC is not entitled to any of the usual and customary rights, benefits or  
22 privileges of City employees. CSULBRF-MBC expressly warrants that neither CSULBRF-  
23 MBC nor any of CSULBRF-MBC's employees or agents shall represent themselves to be  
24 employees or agents of City.

25 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
26 contemplates the personal services of CSULBRF-MBC and CSULBRF-MBC's employees,  
27 and the parties acknowledge that a substantial inducement to City for entering this  
28 Agreement was and is the professional reputation and competence of CSULBRF-MBC and

1 CSULBRF-MBC's employees. CSULBRF-MBC shall not assign its rights or delegate its  
2 duties under this Agreement, or any interest in this Agreement, or any portion of it, without  
3 the prior approval of City, except that CSULBRF-MBC may with the prior approval of the  
4 City Manager of City, assign any moneys due or to become due CSULBRF-MBC under  
5 this Agreement. Any attempted assignment or delegation shall be void, and any assignee  
6 or delegate shall acquire no right or interest by reason of an attempted assignment or  
7 delegation. Furthermore, CSULBRF-MBC shall not subcontract any portion of its  
8 performance without the prior approval of the City Manager or designee, or substitute an  
9 approved subconsultant or contractor without approval prior to the substitution. Nothing  
10 stated in this Section shall prevent CSULBRF-MBC from employing as many employees  
11 as CSULBRF-MBC deems necessary for performance of this Agreement.

12 7. CONFLICT OF INTEREST. CSULBRF-MBC, by executing this  
13 Agreement, certifies that, at the time CSULBRF-MBC executes this Agreement and for its  
14 duration, CSULBRF-MBC does not and will not perform services for any other client which  
15 would create a conflict, whether monetary or otherwise, as between the interests of City  
16 and the interests of that other client. And, CSULBRF-MBC shall obtain similar certifications  
17 from CSULBRF-MBC's employees, subconsultants and contractors.

18 8. MATERIALS. CSULBRF-MBC shall furnish all labor and supervision,  
19 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
20 necessary to or used in the performance of CSULBRF-MBC's obligations under this  
21 Agreement.

22 9. OWNERSHIP OF DATA. All materials, information and data  
23 prepared, developed or assembled by CSULBRF-MBC or furnished to CSULBRF-MBC in  
24 connection with this Agreement, including but not limited to documents, estimates,  
25 calculations, studies, maps, graphs, charts, computer disks, computer source  
26 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,  
27 information, material and memorandum ("Data") shall be the exclusive property of City.  
28 Data shall be given to City, and City shall have the unrestricted right to use and disclose

1 the Data in any manner and for any purpose without payment of further compensation to  
2 CSULBRF-MBC. Copies of Data may be retained by CSULBRF-MBC but CSULBRF-MBC  
3 warrants that Data shall not be made available to any person or entity for use without the  
4 prior approval of City. This Agreement and documentation prepared or developed as part  
5 of CSULBRF-MBC's proposal to City for awarding of this Agreement shall not be  
6 considered confidential data. This warranty shall survive termination of this Agreement for  
7 five (5) years.

8           10. TERMINATION. Either party shall have the right to terminate this  
9 Agreement for any reason or no reason at any time by giving thirty (30) calendar days prior  
10 written notice to the other party. In the event of termination under this Section, City shall  
11 pay CSULBRF-MBC for services satisfactorily performed and costs incurred up to the  
12 effective date of termination for which CSULBRF-MBC has not been previously paid. On  
13 the effective date of termination, CSULBRF-MBC shall deliver to City all Data developed  
14 or accumulated in the performance of this Agreement, whether in draft or final form, or in  
15 process. And, CSULBRF-MBC acknowledges and agrees that City's obligation to make  
16 final payment is conditioned on CSULBRF-MBC's delivery of the Data to City.

17           11. CONFIDENTIALITY. CSULBRF-MBC shall keep all Data confidential  
18 and shall not disclose the Data or use the Data directly or indirectly, other than in the course  
19 of performing its services, during the term of this Agreement and for five (5) years following  
20 expiration or termination of this Agreement. In addition, CSULBRF-MBC shall keep  
21 confidential all information, whether written, oral or visual, obtained by any means  
22 whatsoever in the course of performing its services for the same period of time. CSULBRF-  
23 MBC shall not disclose any or all of the Data to any third party, or use it for CSULBRF-  
24 MBC's own benefit or the benefit of others except for the purpose of this Agreement.

25           12. BREACH OF CONFIDENTIALITY. CSULBRF-MBC shall not be liable  
26 for a breach of confidentiality with respect to Data that: (a) CSULBRF-MBC demonstrates  
27 CSULBRF-MBC knew prior to the time City disclosed it; or (b) is or becomes publicly  
28 available without breach of this Agreement by CSULBRF-MBC; or (c) a third party who has

1 a right to disclose does so to CSULBRF-MBC without restrictions on further disclosure; or  
2 (d) must be disclosed pursuant to legal process.

3 13. ADDITIONAL COSTS. Any costs incurred by City due to CSULBRF-  
4 MBC's failure to meet the standards required by the scope of work or CSULBRF-MBC's  
5 failure to perform fully the tasks described in the scope of work which, in either case,  
6 causes City to request that CSULBRF-MBC perform again all or part of the Scope of Work  
7 shall be at the sole cost of CSULBRF-MBC and City shall not pay any additional  
8 compensation to CSULBRF-MBC for its re-performance.

9 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
10 amended, nor any provision or breach waived, except in writing signed by the parties which  
11 expressly refers to this Agreement.

12 15. LAW. This Agreement shall be construed in accordance with the laws  
13 of the State of California, and the venue for any legal actions brought by any party with  
14 respect to this Agreement shall be the County of Los Angeles, State of California for state  
15 actions and the Central District of California for any federal actions.

16 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
17 constitutes the entire understanding between the parties and supersedes all other  
18 agreements, oral or written, with respect to the subject matter in this Agreement.

19 17. INDEMNITY.

20 A. CSULBRF-MBC shall indemnify, protect and hold harmless  
21 City, its Boards, Commissions, and their officials, employees and agents  
22 ("Indemnified Parties"), from and against any and all liability, claims, demands,  
23 damage, loss, obligations, causes of action, proceedings, awards, fines, judgments,  
24 penalties, costs and expenses, including attorneys' fees, court costs, expert and  
25 witness fees, and other costs and fees of litigation, arising or alleged to have arisen,  
26 in whole or in part, out of or in connection with (1) CSULBRF-MBC's breach or failure  
27 to comply with any of its obligations contained in this Agreement, including any  
28 obligations arising from the Project's compliance with or failure to comply with

1 applicable laws, including all applicable federal and state labor requirements  
2 including, without limitation, the requirements of California Labor Code section 1770  
3 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations  
4 committed by CSULBRF-MBC, its officers, employees, agents, subcontractors, or  
5 anyone under CSULBRF-MBC's control, in the performance of work or services  
6 under this Agreement (collectively "Claims" or individually "Claim").

7 B. In addition to CSULBRF-MBC's duty to indemnify, CSULBRF-  
8 MBC shall have a separate and wholly independent duty to defend Indemnified  
9 Parties at CSULBRF-MBC's expense by legal counsel approved by City, from and  
10 against all Claims, and shall continue this defense until the Claims are resolved,  
11 whether by settlement, judgment or otherwise. No finding or judgment of  
12 negligence, fault, breach, or the like on the part of CSULBRF-MBC shall be required  
13 for the duty to defend to arise. City shall notify CSULBRF-MBC of any Claim, shall  
14 tender the defense of the Claim to CSULBRF-MBC, and shall assist CSULBRF-  
15 MBC, as may be reasonably requested, in the defense.

16 C. If a court of competent jurisdiction determines that a Claim was  
17 caused by the sole negligence or willful misconduct of Indemnified Parties,  
18 CSULBRF-MBC's costs of defense and indemnity shall be (1) reimbursed in full if  
19 the court determines sole negligence by the Indemnified Parties, or (2) reduced by  
20 the percentage of willful misconduct attributed by the court to the Indemnified  
21 Parties.

22 D. The provisions of this Section shall survive the expiration or  
23 termination of this Agreement.

24 18. AMBIGUITY. In the event of any conflict or ambiguity between this  
25 Agreement and any Exhibit, the provisions of this Agreement shall govern.

26 19. NONDISCRIMINATION.

27 A. In connection with performance of this Agreement and subject  
28 to applicable rules and regulations, CSULBRF-MBC shall not discriminate against

1 any employee or applicant for employment because of race, religion, national origin,  
2 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
3 disability. CSULBRF-MBC shall ensure that applicants are employed, and that  
4 employees are treated during their employment, without regard to these bases.  
5 These actions shall include, but not be limited to, the following: employment,  
6 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
7 termination; rates of pay or other forms of compensation; and selection for training,  
8 including apprenticeship.

9 B. It is the policy of City to encourage the participation of  
10 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
11 procurement process, and CSULBRF-MBC agrees to use its best efforts to carry  
12 out this policy in its use of subconsultants and contractors to the fullest extent  
13 consistent with the efficient performance of this Agreement. CSULBRF-MBC may  
14 rely on written representations by subconsultants and contractors regarding their  
15 status. CSULBRF-MBC shall report to City in May and in December or, in the case  
16 of short-term agreements, prior to invoicing for final payment, the names of all  
17 subconsultants and contractors hired by CSULBRF-MBC for this Project and  
18 information on whether or not they are a Disadvantaged, Minority or Women-Owned  
19 Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C.  
20 Sec. 637).

21 20. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
22 accordance with the provisions of the Ordinance, this Agreement is subject to the  
23 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
24 Long Beach Municipal Code, as amended from time to time.

25 A. During the performance of this Agreement, the CSULBRF-MBC  
26 certifies and represents that the CSULBRF-MBC will comply with the EBO. The  
27 CSULBRF-MBC agrees to post the following statement in conspicuous places at its  
28 place of business available to employees and applicants for employment:



1           “During the performance of a contract with the City of Long Beach, the  
2 CSULBRF-MBC will provide equal benefits to employees with spouses and  
3 its employees with domestic partners. Additional information about the City  
4 of Long Beach’s Equal Benefits Ordinance may be obtained from the City of  
5 Long Beach Business Services Division at 562-570-6200.”

6           B.     The failure of the CSULBRF-MBC to comply with the EBO will  
7 be deemed to be a material breach of the Agreement by the City.

8           C.     If the CSULBRF-MBC fails to comply with the EBO, the City  
9 may cancel, terminate or suspend the Agreement, in whole or in part, and monies  
10 due or to become due under the Agreement may be retained by the City. The City  
11 may also pursue any and all other remedies at law or in equity for any breach.

12           D.     Failure to comply with the EBO may be used as evidence  
13 against the CSULBRF-MBC in actions taken pursuant to the provisions of Long  
14 Beach Municipal Code 2.93 et seq., Contractor Responsibility.

15           E.     If the City determines that the CSULBRF-MBC has set up or  
16 used its contracting entity for the purpose of evading the intent of the EBO, the City  
17 may terminate the Agreement on behalf of the City. Violation of this provision may  
18 be used as evidence against the CSULBRF-MBC in actions taken pursuant to the  
19 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor  
20 Responsibility.

21           21.    NOTICES. Any notice or approval required by this Agreement shall  
22 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
23 postage prepaid, addressed to CSULBRF-MBC at the address first stated above, and to  
24 City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with  
25 a copy to the City Engineer at the same address. Notice of change of address shall be  
26 given in the same manner as stated for other notices. Notice shall be deemed given on  
27 the date deposited in the mail or on the date personal delivery is made, whichever occurs  
28 first.

1                   22.    COPYRIGHTS AND PATENT RIGHTS.

2                   A.    CSULBRF-MBC shall place the following copyright protection  
3 on all Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

4                   B.    City reserves the exclusive right to seek and obtain a patent or  
5 copyright registration on any Data or other result arising from CSULBRF-MBC's  
6 performance of this Agreement. By executing this Agreement, CSULBRF-MBC  
7 assigns any ownership interest CSULBRF-MBC may have in the Data to City.

8                   C.    CSULBRF-MBC warrants that the Data does not violate or  
9 infringe any patent, copyright, trade secret or other proprietary right of any other  
10 party. CSULBRF-MBC agrees to and shall protect, defend, indemnify and hold City,  
11 its officials and employees harmless from any and all claims, demands, damages,  
12 loss, liability, causes of action, costs or expenses (including reasonable attorney's  
13 fees) whether or not reduced to judgment, arising from any breach or alleged breach  
14 of this warranty.

15                   23.    WAIVER. The acceptance of any services or the payment of any  
16 money by City shall not operate as a waiver of any provision of this Agreement or of any  
17 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
18 Agreement shall not constitute a waiver of any other or subsequent breach of this  
19 Agreement.

20                   24.    AUDIT. City shall have the right at all reasonable times during the  
21 term of this Agreement and for a period of five (5) years after termination or expiration of  
22 this Agreement to examine, audit, inspect, review, extract information from and copy all  
23 books, records, accounts and other documents of CSULBRF-MBC relating to this  
24 Agreement.

25                   25.    THIRD PARTY BENEFICIARY. This Agreement is not intended or  
26 designed to or entered for the purpose of creating any benefit or right for any person or  
27 entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

CALIFORNIA STATE UNIVERSITY LONG BEACH RESEARCH FOUNDATION on behalf of the COLLEGE OF BUSINESS ADMINISTRATION-MARKETING BUSINESS CENTER

Mary Ann, 2017

By [Signature]  
Name Maria Reyes  
Title sr. director sponsored programs

Apr 25, 2017

By [Signature]  
Name Scott W. PLECO  
Title Director of MSC

"CSULBRF-MBC"

CITY OF LONG BEACH, a municipal corporation

7/17, 2017

By [Signature] EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.  
City Manager  
"City" Tom Modica Assistant City Manager

This Agreement is approved as to form on June 30, 2017.

CHARLES PARKIN, City Attorney

By [Signature] Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lona Beach, CA 90802-4664

## Exhibit A

### Research & Evaluation

Item #6 in the Harvey Milk Park, Outdoor Collaborative Project, formally known as the Outdoor Office Park Project, summary provides for a statistical evaluation Project. It states data will be collected "on the types of improvements and amenities that can attract new business users to work outdoors. The Collaborative Space will also attract the types of people using the park and whether new connections are established."

As noted in the Project Summary, data needs to be collected in the following areas: 1) User Demographics, 2) Park Uses and Experiences, and 3) Park Connections.

#### Information Objectives and Proposed Methodologies

Meeting these information objectives will require a multidimensional data collection strategy that involves several different components. Each component will be directed at collecting the particular information needed to assess the various information objectives and aspects of the outdoor project evaluation requirements.

1. Assess actual park user characteristics and actual park uses and experience including assessment of park programming and activities.

Method: Observational Research.

Through direct observation (similar to a Mystery Shopper methodology), CSULB-CBA students will go to the park every day over a one-week period (9am-5pm) or during times of specific park programming and scheduled activities. Student researchers will observe and record user characteristics, park use, duration of visits, and individual activities at the park. This information will be correlated to daypart and/or to park programming and scheduled activities.

2. Assess park awareness and knowledge of amenities, frequency of visits, intention to visit, zip code of residence, and compliments and complaints on amenities and park facilities among residents living near Harvey Milk Park.

Method: Survey Research with Residents Living within 0-10 miles of the Outdoor Office Park.

This survey will use a 10-minute questionnaire, a standard random digital dial sampling methodology<sup>(AC1)</sup>, and professional telephone interviews to survey residents in the immediate area of the park. We recommend that the survey be done in this way to assure a valid and reliable sampling of residential awareness and opinion of the park amenities that can be projected to all residents of the area.

The survey questionnaire will cover the key elements noted in #2 above. Estimated sample size will be between 100 and 200 (depending on population size around the park, etc.). The random digit dial sample will be drawn professionally by Marketing Systems Group (MSG) and data will be

collected over the telephone by professionally trained telephone interviewers (a suitable professional data collection company will be identified).

Out of pocket costs for this survey are estimated between \$1500 and \$2000 depending on sample size and questionnaire length. It is recommended that these out of pocket costs be part of the "Research and Evaluation" budget that has been allocated to the CSULB-CBA for the evaluation part of the project.

3. Assess park awareness, frequency of visits and compliments and complaints on amenities and park facilities among workers and businesses in the areas surrounding Harvey Milk Park. [AC2]

Method: Online Surveys with Businesses in Areas Surrounding Harvey Milk Park.

One of the important objectives of the Harvey Milk Park, Outdoor Collaborative Space concept is to facilitate collaboration among local entrepreneurs and workers in the area of the park. To measure this, we will conduct an online survey designed to assess these groups' awareness and use of the park amenities. Business emails will be collected from the local BID (Downtown Business District) and a brief online survey will be administered to respondents that are on the local business list.