

# 34872

## STANDARD SUBCONTRACT AGREEMENT

Between

People Assisting The Homeless

And

The City of Long Beach

This Agreement is entered into by and between People Assisting The Homeless (PATH) (Contractor) and The City of Long Beach (Subcontractor) and shall be deemed effective as of July 1, 2017("Effective Date").

### RECITALS

- A. In accordance with its Contract with the Gateway Cities Council of Governments (The GCCOG), Contractor has proposed to subcontract for certain services it will deliver to or for the benefit of the Primary Contract with The GCCOG;
- B. Subcontractor has agreed to enter into an agreement with Contractor, in its initiative to provide services for the GCCOG Action Plan with a focus on three key areas: 1. Homeless Prevention; 2. First Responders Program; and 3. Permanent Supportive Housing; and
- C. Subcontractor certifies that it is qualified by reason of experience, preparation, organization, staffing and facilities to provide services under this Agreement.

### 1. Parities

Contractor, known as PATH (People Assisting The Homeless)., a 501(c)(3) organization incorporated under the laws of the State of California, having its principal office at 340 N Madison Ave, Los Angeles, CA 90004.

Subcontractor, known as The City of Long Beach (CLB) a local municipality incorporated under the laws of the State of California, having its principal office at 2525 Grand Ave. Long Beach, CA 90815.

### 2. Term

This Subcontract shall be from July 1, 2017 to June 30, 2018, unless otherwise terminated or extended, in whole or in part, as provided in this Agreement.

### 3. Services

The Subcontractor agrees to furnish to Contractor the services described in **Exhibit A – Scope of Work** which is herein incorporated by reference.

### 4. Compensation

4.1 Contractor shall pay Subcontractor a maximum of **\$113,750** for said permanent supportive housing and rapid rehousing services billed through monthly invoices for services rendered as outlined in **Exhibit B- Budget**.

4.2 Subcontractor understands that Contractor has the discretion to withhold payment or a portion thereof at the discretion of the Contractor due to material

noncompliance. Material noncompliance is the failure to timely complete a deliverable, failure to comply with contractual stipulations, and includes failure to make progress toward completion of a deliverable to an extent that timely completion becomes infeasible. Subcontractor agrees to be bound by these provisions and hereby authorizes Contractor to withhold from Subcontractor's payments the amount withheld from Contractor by The GCCOG, which is applicable to Subcontractor's invoice. Contractor shall release any amount withheld from Subcontractor's payments within 14 business days of receipt of payment by Contractor from The GCCOG of such withheld amount.

- 4.3 Contractor shall make its payments to Subcontractor within 14 business days of receiving its payment from The GCCOG for its services invoiced.
- 4.4 Contractor assumes no responsibility to pay for expenses not specifically enumerated in this Agreement. Further, Subcontractor understands that Contractor makes no commitment to fund this project beyond the initial term of this Agreement.
- 4.5 Contractor shall review Subcontractor's performance on a periodic basis. In the event Contractor determines that Subcontractor is not meeting its contracted performance measures, Contractor may unilaterally reduce the compensation set forth herein upon written notice to Subcontractor.

#### **5. Early Termination**

Either party may terminate this subcontract without cause upon thirty days written notice to the other party, stating the specific date of termination. In such event, the Subcontractor shall take immediate steps to reduce the incurrence of additional costs. Subcontractor shall be entitled to payment for all services allowed under this subcontract, including non-cancelable obligations incurred prior to the date of the notice of termination, which are properly invoiced to Subcontractor and paid by Contractor.

If Subcontractor terminates this subcontract, with or without cause, the Subcontractor shall furnish to Contractor within 10 working days after termination all documentation of deliverables and progress on work performed under this subcontract, whether finished or in preparation at the time to termination.

#### **6. Cooperation/Coordination**

Contractor is the party primarily responsible to The GCCOG for performance of the Prime Contract and Subcontractor is responsible to Contractor for all of its services. All matters involving the fulfillment of Subcontractor's obligations under this subcontract shall be directed to Contractor, and not to The GCCOG without Contractor's approval.

Contractor's designated contact person for all matters arising under this subcontract are Meredith Berkson, South County Programs Director and Jennifer Hark-Dietz, Chief Operating Officer and/or their designees.

#### **7. Subcontractor's Warranties**

Subcontractor represents and warrants that it has the personnel, expertise, equipment and materials, or will obtain the same, necessary to fulfill its obligations under this

subcontract and that it shall perform its obligations promptly, consistently, efficiently, and accurately for the purposes set forth herein.

**8. Independent Subcontractor**

Subcontractor is an independent subcontractor and not an employee or agent of Contractor for any purpose whatsoever. Subcontractor shall be responsible for achieving the standards established by Contractor under this subcontract; however, Contractor shall not control the manner, or prescribe the method, of accomplishing that portion of the Subcontractor's business to be performed by Subcontractor under this subcontract, and the general public shall be so informed. Subcontractor shall determine the method, details and means of performing its above-described services. In performing services under this subcontract, Subcontractor, except as otherwise provided herein, shall be responsible for paying all costs and expenses incidental to its performance of such services. Contractor is required by the Prime Contractor to monitor programmatic and financial performance and as such may prescribe guidance to Subcontractor's staff related to compliance with the contract and applicable ordinances and regulations. These activities shall not imply an employee/ employer relationship between any parties (The GCCOG, Contractor, and Subcontractor). Contractor shall have no authority with respect to the employment relationship between Subcontractor and Subcontractor's employees, and Subcontractor agrees to assume full responsibility for the payment and deduction of all state and federal taxes, and to comply with all regulations now or hereafter prescribed by legally constituted authority with respect thereto. Subcontractor shall indemnify, save, and hold harmless, Contractor from any and all liability it may incur by Subcontractor's failure to comply with this section.

**9. Assignment**

Neither the Agreement nor any duties or obligations hereunder may be assigned by Subcontractor without the prior written consent of Contractor.

**10. Mitigation of Conflicts of Interest**

Subcontractor warrants and represents that there is no conflict of interest in Subcontractor's other contracts or services or other existing work with the services to be provided pursuant to this Agreement. Subcontractor will ensure that no such conflict arises during the term of this Agreement. Should such a conflict arise, such conflict shall be immediately disclosed to Contractor, and Subcontractor will work to mitigate the conflict of interest.

**11. Confidentiality**

11.1 The Subcontractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, the GCCOG records and client records, in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, Federal policies concerning information technology security and the protection of confidential records and information.

11.2 The Subcontractor shall indemnify, defend, and hold harmless Contractor and The GCCOG, its Special Districts, elected and appointed officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, administrative penalties and fines assessed including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by the Subcontractor, its officers, employees, agents, or subcontractors, to comply with this Sub-paragraph 11.2, as determined by the Contractor in its sole judgment. Any legal defense pursuant to the Subcontractor's indemnification obligations under this Sub-paragraph 11.2 shall be conducted by the Subcontractor and performed by counsel selected by the Subcontractor and approved by Contractor or The GCCOG. Notwithstanding the preceding sentence, Contractor and The GCCOG shall have the right to participate in any such defense at its sole cost and expense, except that in the event the Subcontractor fails to provide Contractor and The GCCOG with a full and adequate defense, as determined by Contractor and The GCCOG in its sole judgment, Contractor and The GCCOG shall be entitled to retain its own counsel, including without limitation, The GCCOG Counsel, and reimbursement from the Subcontractor for all such costs and expenses incurred by the Contractor or The GCCOG in doing so. The Subcontractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of the Contractor or The GCCOG without the Contractor's and The GCCOG's prior written approval.

11.3 The Subcontractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality and indemnification provisions of this Agreement.

## **12. Notices**

Any notice to be given hereunder by either party to the other may be effected either by personal deliver, in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with this section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of five days after mailing.

PATH  
Joel Roberts,  
Chief Executive Officer  
  
340 N. Madison Ave.  
Los Angeles, CA 90004

City of Long Beach  
Teresa Chandler,  
Human Services Bureau Manager  
  
2525 Grand Ave.  
Long Beach, CA 90815

**13. Breach**

Except for excusable delays, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

**14. Partial Invalidity**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**15. Governing Law**

The Agreement will be governed by and construed in accordance with the laws of the State of California.

**16. Indemnification of The GCCOG and Contractor**

Subcontractor agrees to indemnify, defend and save harmless The GCCOG and Contractor and its officers, agents, and employees, from any and all claims and losses accruing or resulting to any and all Subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this subcontract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damages by Subcontractor in the performance of this subcontract.

**17. Indemnification of Subcontractor**

Contractor shall indemnify, defend and hold Subcontractor harmless, including Subcontractor's officers, agents and employees, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages and deficiencies, including reasonable attorney fees, which Subcontractor incurs and which arise, result from or relate to Subcontractor's performance of its obligations under the Prime Contract.

**18. Insurance**

Subcontractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in **Exhibit C, Insurance Requirements**, attached hereto and made a part of this Agreement.

**19. Adequacy of Services Provided**

Should a dispute arise over the adequacy of services performed during a given period, Subcontractor and Contractor agree to meet to discuss and resolve the dispute. In the event that such informal resolution is not possible, the parties agree to resolve the dispute in accordance with the terms of the "Dispute Resolution" section below.

## **20. Dispute Resolution**

Any controversy, dispute or claim arising out of, in connection with, or related to the interpretation, performance or breach of the subcontract shall be resolved in compliance with the mandatory notice and claim presentation procedures pursuant to Chapter 5 (commencing with Section 930) of Part 3 of Division 3.6 of Title 1 of the California Government Code.

## **21. Entire Agreement**

This subcontract supersedes any and all other agreements, either oral or in writing, between parties hereto with respect to the rendering of services by the Subcontractor to the Contractor pursuant to the Prime Contract and this subcontract contains all the covenants and agreements between the parties with respect to such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no agreement, statement, or promises not contained in this subcontract shall be valid or binding. Any modification to this Agreement will be effective only if it is in writing and signed by the party to be charged, other than actions taken by The GCCOG, which have the effect of modifying this Agreement. A copy of the contract between Contractor and The GCCOG will be provided to the Subcontractor. In the event this Agreement does not include a particular clause or requirement, Subcontractor is hereby notified that all provisions and clauses of the Prime Contract are passed through to the Subcontractor.

**22. Contract Amendment** Should either party, Contractor or Subcontractor, determine that a revision or change to this contract is necessary, the parties will discuss the proposed revision. Any revision or amendment to this contract must be made in writing, executed by both Contractor and Subcontractor.

## **23. Ratification clause**

Due to the need for services to be provided on a continuous basis, subcontractor may have provided services prior to the execution of this Agreement. To the extent that such services were performed in accordance with the terms and conditions of the Agreement, those services are hereby ratified.

## **24. Attachments**

The following attachments incorporated by reference in this subcontract:

- Exhibit A- Scope of Work
- Exhibit B- Budget
- Exhibit C- Insurance Requirements and Certificates

*JH Dietz*

Jennifer Hark Dietz,  
Chief Operating Officer  
PATH  
340 North Madison Ave.  
Los Angeles, CA 90004

*1/2/18*

Date

*PH West*

Patrick H. West,  
City Manger  
City of Long Beach  
2525 Grand Ave.  
Long Beach, CA 90815

*Tom Modica*  
Assistant City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

*12/19/17*

Date

APPROVED AS TO FORM

*12/19*, 20 *17*

CHARLES PARKIN, City Attorney

By

*Linda T. Vu*

LINDA T. VU  
DEPUTY CITY ATTORNEY

## **Exhibit A Scope of Work**

### **Subcontractor will be responsible for the following:**

- 25 VI-SPDATs will be completed in one year
- 40 individuals will be identified at hot spots in one year
- 6 motel vouchers will be provided in one year
- 16 individuals will be provided housing location services in one year
- 16 Individuals will be provided move-in assistance
- 24 people will be connected to mainstream benefits
- 35 people permanently housed (at a minimum)
- 90% of individuals housed will maintain their housing

### **Program Reporting:**

The PHP report is due by the 7<sup>th</sup> of the subsequent month in which services were rendered.

The HPI report and Narrative is due by the 10<sup>th</sup> of the subsequent month in which services were rendered.



**Exhibit B  
Budget**

**Invoicing**

The Subcontractor may submit monthly invoices, not to exceed the annual amount. Invoices are due by the 10th calendar day of the month immediately following the quarter in which services were rendered. An invoice template shall be made available to the Subcontractor by Contractor.

**FY 2017-2018**

**Term: 07/01/2017 - 06/30/2018**

**City of Long Beach**

<b>BUDGET</b>			
<b>FUNDING SOURCE:</b>	<b>COG</b>		
<b>BUDGET COMPONENT:</b>	<b>PSH</b>	<b>RRH</b>	<b>TOTAL REQUEST AMOUNT</b>
<b>DIRECT PROGRAM COSTS:</b>	<b>61,250.00</b>	<b>52,500.00</b>	<b>113,750.00</b>
<b>ADMINISTRATION/ INDIRECT:</b>			-
<b>TOTAL BUDGET:</b>	<b>61,250.00</b>	<b>52,500.00</b>	<b>113,750.00</b>

**Payment Terms:**

The Subcontractor will be compensated a Maximum Subcontract Amount of **\$113,750** in accordance with the agreement. SUBCONTRACTOR UNDERSTANDS THAT NO COMPENSATION WILL BE PAID WITHOUT MONTHLY REPORTING OF SERVICES PROVIDED AND OUTCOMES ACHIEVED.

## **Exhibit C Insurance**

**Please ensure the following:**

1. PATH and The Gateway City Council of Governments and their officers, and employees are named as additional insured
2. The Certificate holder is PATH (People Assisting The Homeless)  
340 N Madison Ave., Los Angeles CA 90004
3. List the contract number on the certificate
4. Include the additional insured endorsement with the certificate of insurance
5. The policy number must be included in the endorsement and must match the Certificate of Insurance
6. The policy period must be current for the duration of the grant period
7. Coverage must meet minimum insurance requirements. Refer to the insurance section of the contract and requirements to follow

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

Prior to the commencement of the services to be performed under this Agreement, and throughout the term of this Agreement, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Agency in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to Agency.

Consultant shall provide the following types and amounts of insurance:

1. **Commercial General Liability Insurance** using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to policy limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event shall be less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
2. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.
3. **Professional Liability or Errors and Omissions Insurance** as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant and "Covered Professional Services" as designated in the policy must specifically include the services performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.
4. **Worker's Compensation** as required by the state of California with employer's liability limits no less than \$1,000,000 per accident for all covered losses. However, Consultant will not be required to maintain worker's compensation insurance if Consultant does not have any employees.

**Insurance procured pursuant to these requirements shall be written by insurers that are**

**admitted carriers in the state of California and with an A.M. Bests rating of A or better and a minimum financial size VII.**

**General conditions pertaining to provision of insurance coverage by Consultant.** Consultant and Agency agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Agency, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against Agency regardless of the applicability of any insurance proceeds.
3. ~~None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.~~
4. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured.
5. All coverage types and limits required are subject to approval, modification and additional requirements by Agency, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Agency's protection without Agency's prior written consent.
6. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to Agency at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Agency has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Agency shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at Agency option.
7. Consultant agrees to endorse the insurance provided pursuant to these requirements to require 10 days notice to Agency prior to cancellation of such liability coverage or any material alteration or non-renewal of any such coverage, other than for nonpayment of premium, 30 days notice to Agency prior to any other cancellation of such liability coverage or material alteration or non-renewal of any such coverage, and to require indemnifying parties to do likewise.

8. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to Agency.
9. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Agency. At that time Agency shall review options with Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
10. Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, Agency will negotiate additional compensation proportional to the increased benefit to Agency.
11. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
12. Consultant acknowledges and agrees that any actual or alleged failure on the part of Agency to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on Agency nor does it waive any rights hereunder in this or any other regard.
13. Consultant will renew the required coverage annually as long as Agency, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Agency executes a written statement to that effect.
14. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five days of the expiration of the coverages.
15. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to Agency, its employees, officials and agents.
16. Requirements of specific coverage features or limits contained in this section are not

intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

17. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
18. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
19. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.
20. Consultant agrees to provide immediate notice to Agency of any claim or loss against Consultant arising out of the work performed under this Agreement. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.