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

SUBCONTRACT

This SUBCONTRACT is made and entered, in duplicate, as of May 26, 2016 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 May 3, 2016, by and between LEADERSHIP LONG BEACH INC., a California nonprofit corporation, with offices located at 743 Atlantic Avenue, Long Beach, California 90813 (hereafter "Subcontractor"), and the CITY OF LONG BEACH, a California municipal corporation (hereafter "Contractor" or "City").

WHEREAS, Contractor has entered into a Letter of Agreement for the North Long Beach HEAL Zone Phase 2 (hereafter "Prime Contract") with the California Community Foundation (hereafter "Foundation") and Kaiser Foundation Hospitals (hereafter "KFH") (collectively as the "Grantor"); and

WHEREAS, in order to fulfill its obligations to Grantor under the Prime Contract, Contractor desires to engage Subcontractor to provide for community-specific strategies in an effort to create a healthy North Long Beach; and

WHEREAS, Subcontractor desires to perform such work in accordance with the terms and conditions of this Subcontract;

NOW, THEREFORE, Contractor and Subcontractor agree as follows:

- 1. PRIME CONTRACT. Notwithstanding any other provision of this Subcontract, this contract is a Subcontract under the terms of the Prime Contract with Grantor and each and all of the provisions of the Prime Contract and any amendments thereto shall extend to and be binding upon the parties to this Subcontract. All representations and warranties contained in this Subcontract shall inure to the benefit of the Grantor.
 - 1.1 The Contractor shall attach a copy of the Prime Contract as Exhibit "A" to this Subcontract.
- 2. <u>SERVICES</u>. The Subcontractor shall provide services in accordance with the Prime Contract and Exhibit "B" identifying the services and rates of Subcontractor.

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Exhibit "B" is attached to this Subcontract and incorporated by reference. Subcontractor shall comply with the Prime Contract in performing its obligations under this Subcontract unless the context clearly indicates otherwise. Subcontractor shall request clarification from Contractor regarding whether or not specific portions of the Prime Contract apply. A breach of the Prime Contract shall be a breach of this Subcontract.

TERM OF SUBCONTRACT. The term of this Subcontract shall commence on April 1, 2016 and shall expire on March 31, 2017, unless terminated earlier pursuant to any of the conditions for termination in the Prime Contract.

4. PAYMENT.

- Contractor shall compensate Subcontractor a total maximum 4.1 contract sum not to exceed Twenty-Five Thousand Dollars (\$25,000) for the term of this Subcontract to provide the services designated in Section 2.0 of this Subcontract.
- Contractor shall have no obligation to pay for any work 4.2 performed by Subcontractor except for those services which are expressly authorized pursuant to this Subcontract and which are provided during the term of this Subcontract.
- Contractor shall disburse the funds payable hereunder in due 4.3 course of payments following receipt from Subcontractor of quarterly billing statements in a form approved by Contractor for the preceding quarter, and conditioned on the Contractor's receipt of the quarterly progress report from Subcontractor.
- Contractor shall have no obligation to pay Subcontractor until 4.4 and unless Contractor receives quarterly progress reports that summarizes Subcontractor's performance under this Subcontract during the immediately preceding quarter, and that describes Subcontractor's progress in providing the services stated in Exhibit "B".
 - 4.5 Contractor's obligation to pay Subcontractor arises only after

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receipt of funds from the Grantor under the Prime Contract.

- Subcontractor shall submit invoices and progress reports on a 4.6 quarterly basis. Subcontractor shall prepare and submit quarterly invoices within fifteen (15) calendar days after the end of each quarter in which services were provided. Attached to each invoice shall be documentation to support the invoiced amounts. Failure to submit a completed invoice with proper back-up documentation may result in late payment of the invoice. Contractor reserves the right to refuse payment of invoices received sixty (60) days after the services were provided.
- 4.7 Subcontractor shall maintain all records relating to the performance of this Subcontract in accordance with generally accepted accounting principles and in the manner prescribed by Contractor. Subcontractor's records shall be current, complete and available for inspection and audit during its normal business hours, during the term of this Subcontract and for a period of three (3) years after termination as deemed necessary by the City Auditor, any other representative of the City, and the Grantor or any duly authorized representative of the Grantor. Subcontractor shall provide access to all documents and materials relating to Contractor and to Subcontractor's operations, and Subcontractor shall provide any information that the City Auditor, other City representatives, the Grantor, and the Grantor's representatives require in order to monitor and evaluation Subcontractor's performance. Subcontractor shall provide all reports, documents or information requested by City or the Grantor within three (3) days after a written or oral request from a City or Grantor representative, unless a longer period of time is otherwise expressly stated by said representative. Each quarter Subcontractor shall submit performance reports certified by one of Subcontractor's officers or its Executive Director identifying the services performed.
- ANTI-DISCRIMINATION. In the performance of this Subcontract, 5. Subcontractor shall not discriminate against any employee, applicant for employment or service, or subcontractor because of race, color, religion, national origin, sex, sexual

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orientation, AIDS, HIV status, age, disability or handicap. Subcontractor shall take affirmative action to assure that applicants are employed or served, and that employees and applicants are treated during employment or services without regard to these categories. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Subcontractor shall permit access by City or any other agency of the Grantor, state or federal governments to Subcontractor's records of employment, employment advertisements, application forms and other pertinent data and records for the purpose of investigation to ascertain compliance with the fair employment practices provisions of this Subcontract.

6. INDEPENDENT SUBCONTRACTOR.

- In performing services hereunder, Subcontractor is and shall 6.1 act as an independent subcontractor and not as an employee, representative, or agent of City. Subcontractor's obligations to and authority from the City are solely as prescribed herein. Subcontractor expressly warrants that it will not, at any time, hold itself out or represent that Subcontractor or any of its agents, volunteers, subscribers, members, officers or employees are in any manner officials, employees or agents of City. Subcontractor shall not have any authority to bind City for any purpose.
- 6.2 Subcontractor acknowledges and agrees that a) City will not withhold taxes of any kind from Subcontractor's compensation, b) City will not secure workers' compensation or pay unemployment insurance to, for or on Subcontractor's behalf, and c) City will not provide and Subcontractor and Subcontractor's employees are not entitled to any of the usual and customary rights, benefits or privileges of City employees.
 - This Subcontract contemplates the personal 7. NON-ASSIGNMENT.

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services of Subcontractor and Subcontractor's employees. Subcontractor shall not delegate its duties or assign its rights hereunder, or any interest herein or any portion hereof, without the prior written consent of Contractor which the Contractor may withhold in its discretion. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation.

8. THIRD PARTY BENEFICIARY.

- Contractor and Subcontractor understand and agree that this 8.1 Subcontract is entered into for the benefit of Grantor, and that Grantor is hereby expressly made a third party beneficiary of this Subcontract.
- Notwithstanding any other provision of this Subcontract, 8.2 Grantor does not intend for Subcontractor to acquire any rights as a third party beneficiary of Prime Contract.
- INDEMNIFICATION. Subcontractor shall defend, protect, indemnify 9. and hold City, its officials, employees and agents harmless from and against any and all claims, demands, causes of action, costs or expense (including reasonable attorney's fees), damage, loss, or liability of any kind or nature arising from the alleged negligent acts, omissions or misrepresentations of Subcontractor, its officers, agents or employees in the performance of this Subcontract or from any payment that City must make to the Grantor under the Prime Contract. Subcontractor shall pay any settlement or satisfy any judgment rendered against either Subcontractor or City as a result of said negligent acts, omissions or misrepresentations of Subcontractor, its officers, agents or employees in the performance of this Subcontract, or as a result of any payment that City must make to the Grantor under the Prime Contract.

10. INSURANCE.

10.1 As a condition precedent to the effectiveness of this Agreement, Subcontractor shall procure and maintain, at Subcontractor's expense for the duration of this Agreement, from insurance companies that are admitted to

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write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

10.1.1 Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

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

- 10.1.3 Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- 10.1.4 Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in

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an amount not less than \$500,000 combined single limit per accident.

10.2 Any self-insurance program, self-insured retention, deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

- 10.3 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 selfinsurance maintained by Subcontractor. Subcontractor shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- 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 Agreement expires or is terminated, unless Subcontractor guarantees that Subcontractor will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.
- 10.5 Subcontractor shall require that all subconsultants or contractors that Subcontractor uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.
- 10.6 Prior to the start of performance, Subcontractor shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Subcontractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements

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evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Subcontractor and Subcontractor's subconsultants and contractors, at any time. Subcontractor shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

- 10.7 Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Subcontractor, Subcontractor's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.
- The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Subcontractor's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

11. MISCELLANEOUS.

- The City Manager or designee is authorized to administer this Subcontract and all related matters, and any decision of the City Manager or designee in connection herewith shall be final.
- 11.2 Subcontractor shall have the right to terminate this Subcontract at any time for any reason by giving thirty (30) days' prior notice of termination to Contractor, and Contractor shall have the right to terminate all or any part of this Subcontract at any time for any reason or no reason by giving five (5) days' prior notice to Subcontractor. If either party terminates this Subcontract, all funds held by Subcontractor under this Subcontract which have not been spent on the date of termination shall be returned to Contractor.
- 11.3 This document constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the

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subject matter herein. This Subcontract shall not be amended, nor any provision or breach hereof waived, except in writing by the parties which expressly refers to this Subcontract.

- 11.4 This Subcontract shall be governed by and construed pursuant to the laws of the State of California.
- 11.5 This Subcontract including all exhibits shall not be amended, nor any provision or breach hereof waived, unless in writing signed by the parties which expressly refers to this Subcontract.
- 11.6 In the event of any conflict or ambiguity between this Subcontract and an exhibit, the provisions of this Subcontract shall govern.
- The acceptance of any service or payment of any money by Contractor shall not operate as a waiver of any provision of this Subcontract, or of any right to damages or indemnity stated herein. The waiver of any breach of this Subcontract shall not constitute a waiver of any other or subsequent breach of this Subcontract.

EXECUTED PURSUANT

TO SECTION 301 OF

2016.

CITY CHARTEP.

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

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EXHIBIT A

LETTER OF AGREEMENT CALIFORNIA COMMUNITY FOUNDATION OBO KAISER FOUNDATION HOSPITALS, SOUTHERN CALIFORNIA REGION COMMUNITY BENEFIT CHARITABLE CONTRIBUTIONS PROGRAM

This Letter of Agreement (hereinafter "Agreement") is entered into by and between the California Community Foundation, (the "Foundation"), a California nonprofit public benefit corporation, Kaiser Foundation Hospitals, a California nonprofit, public benefit corporation (hereinafter "KFH") and City of Long Beach Department of Health and Human Services, Tax ID (a charter city organized in the State of California and not subject to federal or state income tax.

This Agreement sets forth the understanding of the parties hereto as to the terms and conditions under which the Foundation at the recommendation of KFH shall donate funds in the amount of \$1,000,000.00 payable over a three year funding period beginning April 1, 2016 through April 1, 2019 for North Long Beach HEAL Zone Phase 2. Second and third year funding is contingent upon meeting the terms and conditions of the grant. Such terms and conditions are as follows:

- 1. <u>Tax Exemption Status</u>: Grantee represents that at all times relevant herein, it is a charter city organized in the State of California and not subject to federal or state income tax.
- 2. <u>Purpose of Grant</u>. Grantee shall use entire Grant to support the specific goals, objectives, activities, and outcomes as stated in the Grantee's funding application and, for Grants greater than \$25,000, as submitted in the Work Plan.
- 3. <u>Expenditure of Funds</u>. This Grant (together with any income earned upon investment of grant funds) is made for the purpose outlined in the Grantee's Work Plan and may not be expended for any other purpose without KFH's prior written approval.
- 4. <u>Prohibited Uses</u>. In no event shall Grantee use any of the funds from this Grant to (a) support a political campaign, (b) support or attempt to influence any government legislation, except making available the results of non-partisan analysis, study or research, or (c) grant an award to another party or for any purpose other than one specified in Section 170(c)(2)(b) of the Internal Revenue Code of 1986 as amended.
- 5. <u>Return of Funds.</u> The Foundation reserves the right to discontinue, modify or withhold payments to be made under this Agreement or to require a total or partial return of any funds, including any unexpended funds under the following conditions:
 - (a) If KFH, in its sole discretion, determines that the Grantee has not performed in accordance with this Agreement or has failed to comply with any term or condition of this Agreement.
 - (b) If Grantee loses its status as an eligible Grantee under Paragraph 1 above.
 - (c) Any portion of the funds is not used for the approved purpose
 - (d) Such action is necessary to comply with the requirements of any law or regulation applicable to Grantee or to KFH or to this Grant.

- 6. Records, Audits and Site Visits. KFH is authorized to conduct audits, including on-site audits, at any time during the term of this Grant and within four years after completion of the Grant. Grantee shall allow KFH and its representatives, at its request, to have reasonable access during regular business hours to Grantee's files, records, accounts, personnel and client or other beneficiaries for the purpose of making such audits, verifications or program evaluations as KFH deems necessary or appropriate concerning this Grant. Grantee shall maintain accounting records sufficient to identify the Grant and to whom and for what purpose such funds are expended for at least four (4) years after the Grant has been expended.
- 7. <u>No Assignment or Delegation</u>. Grantee may not assign, or otherwise transfer, any rights or delegates any of Grantee's obligations under this Agreement without prior written approval from KFH.
- 8. Records and Reports. Grantee shall submit written progress report(s) to KFH in accordance with the due dates stated on the Grant Summary (Attachment).

Grantee shall be primarily responsible for the content of the evaluation report. If KFH determines IRB approval is necessary, as part of the evaluation process, Grantee shall follow KFH IRB approval processes and procedures.

- 9. <u>Required Notification</u>. Grantee is required to provide KFH with immediate written notification of any change in Grantee's tax exempt status or when Grantee is unable to expend the grant funds for the approved purposes described in the Work Plan.
- 10. <u>Identification of KFH</u>. Grantee shall identify KFH as a supporting organization in all published material relating to the subject matter of this Grant. Whenever possible and appropriate, Grantee shall publicly acknowledge KFH for this Grant.
- 11. Equal Employment Opportunity. Grantee agrees to comply with and be bound by the nondiscrimination and affirmative action clauses contained in: Executive Order 11246, as amended, relative to equal opportunity for all persons without regard to race, color, religion, sex or national origin; the Vocational Rehabilitation Act of 1973, as amended, relative to the employment of qualified handicapped individuals without discrimination based upon their physical or mental handicaps; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, relative to the employment of disabled veterans and veterans of the Vietnam Era, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations (CFR).
- 12. <u>Immigration Act Requirements</u>. Grantee shall comply during the term of this Agreement with the provisions of the Immigration Reform and Control Act of 1986 and any regulations promulgated thereunder. Grantee hereby certifies that it has obtained a properly completed Employment Eligibility Certificate (INS Form I-9) for each worker performing services related to the program described in the Work Plan.

- 13. <u>Licensing and Credentials</u>. Grantee agrees to maintain, in full force and effect, all required governmental or professional licenses and credentials for itself, its facilities and for its employees and all other persons engaged in work in conjunction with this Grant.
- 14. Payment of Grant. Payment may be made from the Kaiser Permanente Southern California Fund for Charitable Contributions, a component fund of the Foundation.
 - (a) First payment by the Foundation will be contingent upon a signed Agreement between the Foundation, KFH and Grantee.
 - (b) Subsequent payments (if any) are contingent upon compliance with this Agreement, including timely receipt of reports as outlined in Paragraph 8 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By:	By: EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER CITY CHARTER City Manager City of Long Beach Department of Health and Human Services
Date: 4/15/16	Date: 5/23/16
California Community Foundation	California Community Foundation
By: Stenen J. Coll	By: <u>House Bryson</u> Print: Louise Bryson
Print: Steven J. Cobb	Print: 10413E Or 49011
Title: VP + CFD.	Title: Trustee
Date: 6/14/2016	Date: 6 20 2016
APPROVED AS TO FORM On 10, 20 16 CHARLES PARKIN, City Attorney By DEPUTY CITY ATTORNEY	

LETTER OF AGREEMENT Attachment

GRANT SUMMARY

GRANT NUMBER: 20647926	DATE AUTHORIZED:	
GRANTEE NAME: City of Long Beach Department of Health and Human Services Grantee Address: 2525 Grand Avenue Long Beach, CA 90815	AMOUNT: \$1,000,000.00 over 36 months	
B 200013		

CONTACT, TITLE: Ms. Susan Price, Community Health Bureau Manager

TELEPHONE: (562) 570-4003 **FAX:** 562-570-4066

CB PROJECT MANAGER: Clara Steimberg, Project Manager, Community Benefit

Phone: (626) 405-5999 Email: so.cal.grants@kp.org

GRANT PURPOSE: North Long Beach HEAL Zone Phase 2

GRANT OBJECTIVES:

• Implementing a city policy to incentivize the use of private land for urban agriculture

- Working with urban farmers and community members to sell or exchange their locally grown fruits and vegetables
- Activating a bike hub in Houghton Park to facilitate bike workshops, bike rides, mentor youth as community leaders, and assist in the implementation of the Bicycle Master Plan
- Beautifying and enhancing walking routes to schools and implementing safe routes to school programming
- Enhancing the healthy lifestyle prescription program at a community clinic
- Developing youth leaders to implement a healthy schools program at Jordan High School

GRANT PERIOD:	
Start date: 4/1/2016	End Date: 4/1/2019

NARRATIVE AND FINANCIAL REPORTS DUE:

Requirement	Due Date	
Progress Report	May 1, 2017	
Progress Report	May 1, 2018	
Final Report	May 1, 2019	

EXHIBIT B

City of Long Beach Department of Health and Human Services Kaiser Permanente North Long Beach Healthy Eating Active Living (HEAL) Zone Initiative

SUBCONTRACTOR SCOPE OF WORK April 1, 2016 – March 31, 2017

Subcontractor Agency: Leadership Long Beach, Inc. Long Beach Fresh Project 743 Atlantic Avenue Long Beach, CA 90813

Section 1.0 - Subcontractor Objectives:

- 1. Identify and secure location(s) for Fruit and Vegetable Exchanges
- 2. Coordinate and manage a minimum of three Fruit and Vegetable Exchanges
- 3. Recruit and train community members to sell their own grown fruits and vegetables
- 4. Create and promote a toolkit that describes the urban farming resources available to the North Long Beach community
- 5. Educate community members and leaders about the potential impacts of establishing Urban Agriculture Incentive Zones
- 6. Prepare and train residents to promote urban agriculture policies and practices
- 7. Provide a list of eligible parcels that may be eligible for urban agriculture in North Long Beach
- 8. Attend and engage in Coalition for a Healthy North Long Beach meetings/events and attend 2 or more HEAL Convenings
- 9. Participate in monthly check-in calls with DHHS staff to provide update on scope of work progress

Section 2.0 - Budget:

The community coordinator (600 hours at \$15/hour) will assist with outreach, resident engagement, and project coordination. The project managers (200 hours at \$30/hour) will provide project oversight, technical assistance, and ensure objectives are met. Operating costs will include materials for meetings and events (\$2,500), design and promotion of HEAL activities (\$4,000), and the use of office space (\$2,000). An indirect cost rate of 6% will be charged to cover fiscal sponsorship fees.

Item	Budget
Personnel Costs	
Community Coordinator (600 hours)	\$9,000
Project Management (200 hours)	\$6,000
Operating Expenses	
Meetings and Events	\$2,500
Design and Promotion	\$4,000
Office Usage	\$2,000
Indirect Costs (6%)	\$1,500
TOTAL =	\$25,000