

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

CONTRACT

**36541**

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3 THIS CONTRACT ("Contract") is made and entered into, in duplicate,  
4 effective as of February 14, 2023, for reference purposes only, pursuant to a minute order  
5 adopted by the City Council of the City of Long Beach at its meeting held on July 13, 2021,  
6 by and between PERFORMANCE EXCELLENCE PARTNERS, LLC, a Delaware limited  
7 liability corporation ("Contractor"), with offices located at 21241 Hillside Lane, Huntington  
8 Beach, California 92646, and the CITY OF LONG BEACH, a municipal corporation ("City")  
9 and administering entity for Pacific Gateway Workforce Innovation Network.

10 WHEREAS, City submitted an application ("Application") to the Employment  
11 Development Department of the State of California (the "State"), for funds to provide  
12 meaningful training and employment opportunities for economically disadvantaged,  
13 unemployed and underemployed persons consistent with the Workforce Investment Act of  
14 1998 ("WIA") codified as Section 504 of the Rehabilitation Act, 29 U.S.C. 794(d) and all  
15 regulations, directives, policies, procedures and amendments issued thereto and/or  
16 legislation, regulations, policies, directives, and/or procedures which may replace the  
17 Workforce Investment Act; and

18 WHEREAS, Congress reauthorized the Workforce Investment Act of 1998  
19 on July 22, 2014 as the "Workforce Innovation and Opportunity Act (WIOA)" to provide  
20 workforce innovation activities, through statewide and local workforce innovation systems  
21 such as Pacific Gateway Workforce Innovation Network (Pacific Gateway), administered  
22 by the City of Long Beach; and

23 WHEREAS, the Application was approved by the State and Workforce  
24 Innovation and Opportunity Act subgrant has been executed by and between the State and  
25 the City authorizing such programs and providing the funding therefore under Workforce  
26 Innovation and Opportunity Act Master Subgrant Agreement which has been designated  
27 as the ("Prime Contract"). The Prime Contract No. AA311013, is incorporated herein by  
28 reference as though fully set forth; and

1           WHEREAS, Contractor desires to participate in said program and is qualified  
2 by procurement for the reason of experience, preparation, organization, staffing and  
3 facilities to provide services; and

4           WHEREAS, City is willing to utilize Contractor to provide various workforce  
5 development services;

6           NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
7 conditions in this Agreement, the parties agree as follows:

8           1.    DOCUMENT INCORPORATION.

9           A.    The following documents are incorporated herein and made a  
10 part hereof by this reference as if fully set forth:

11           i.    The Prime Contract, and any extension or continuation  
12 thereof or any grant agreement which is the successor thereto which  
13 authorizes a training and employment program for the economically  
14 disadvantaged, unemployed and underemployed persons, and the  
15 documents incorporated therein and attachments thereto, including the  
16 assurances and certifications made by the State to the City.

17           ii.   Contractor's program description, statement of work  
18 performed, Contractor's operation plan for participants, program conditions  
19 and standards for Contractor's performance under this Contract (collectively,  
20 the "Statement of Work") attached hereto as Exhibit "A".

21           B.    Contractor and City agree to be bound by all the terms,  
22 conditions and provisions contained in the Prime Contract, the Application, and the  
23 Statement of Work (collectively, the "Contract Documents").

24           C.    Contractor hereby agrees to assume full responsibility for the  
25 performance of the operation, coordination and administration of such program  
26 pursuant to all the terms and conditions of the exhibits to the extent that said  
27 documents are applicable to the delivery of services by Contractor hereunder; and  
28 the parties hereto agree to perform all duties, obligations and tasks to be performed

1 by each party under the Contract Documents.

2 D. In the event there is any conflict between the provisions of this  
3 Contract and the provisions of the Prime Contract, including the attachments thereto  
4 and the documents incorporated therein, as presently worded or amended in the  
5 future, the parties agree that the provisions of the Prime Contract shall control.

6 Contractor shall conduct training and employment activities in accordance  
7 with the provisions of the Contract Documents.

8 2. TERM.

9 A. The term of this Contract ("Term") shall be deemed to have  
10 commenced as of July 13, 2021, and unless sooner terminated pursuant to the  
11 provisions hereof, shall terminate on June 30, 2023. Either of the parties hereto  
12 shall have the right to terminate this Contract in its entirety at any time during the  
13 Term for any or no reason whatsoever by giving fifteen (15) days prior written notice  
14 of termination to the other party. City shall have the additional right to cancel any  
15 part of this Contract at any time during the Term for any reason whatsoever by giving  
16 fifteen (15) days' notice of such cancellation to the Contractor.

17 B. Notwithstanding the foregoing, the City shall have the right to  
18 terminate and cancel this Contract without notice, in its sole discretion, if the actions  
19 or non-action of Contractor subjects the City to liability, legal obligations or program  
20 operation obligations beyond the liability and obligations under the Contract  
21 Documents. If this Contract is terminated prior to the expiration of the Term,  
22 Contractor shall be reimbursed for all eligible program allowable costs which have  
23 been accrued but not paid through the effective date of termination. Contractor  
24 agrees to accept such amount, plus all amounts previously paid, as full payment  
25 and satisfaction of all obligations of City to Contractor.

26 3. AWARD UNDER SPECIAL CONDITIONS. The City may award a  
27 contract under special conditions if it determines the Contractor as "high risk" under the  
28 following categories:

1           A.    (1) A history of unsatisfactory performance, or (2) Is not  
2 financially stable, or (3) Has a management system which does not meet the  
3 management standards, or (4) Has not conformed to terms and conditions of  
4 previous awards, or (5) Is otherwise not responsible; and if the City determines that  
5 an award will be made, special conditions and/or restrictions shall correspond to the  
6 high risk condition and shall be included in the award.

7           B.    Special conditions or restrictions may include: (1) Payment on  
8 a reimbursement basis; (2) Withholding authority to proceed to the next phase until  
9 receipt of evidence of acceptable performance within a given funding period; (3)  
10 Requiring additional, more detailed financial reports; (4) Additional project  
11 monitoring; (5) Requiring the Contractor to obtain technical or management  
12 assistance; or (6) Establishing additional prior approvals.

13           C.    If the City decides to impose such conditions, the City will either  
14 include such corrective action in the Statement of Work or notify the Contractor as  
15 early as possible, in writing, of: (1) The nature of the special conditions/restrictions;  
16 (2) The reason(s) for imposing them; (3) The corrective actions which must be taken  
17 before they will be removed and the time allowed for completing the corrective  
18 actions and (4) The method of requesting reconsideration of the conditions or  
19 restrictions imposed.

20           4.    PERFORMANCE REVIEW.

21           A.    After each quarter during the Term, the City will conduct a  
22 review of Contractor's performance by comparing the Contractor's planned  
23 performance and/or contract earning levels with the actual performance and  
24 contract earning levels achieved by Contractor. If the Contractor is ten percent  
25 (10%) or more below their planned total at the end of the first quarter or any quarter  
26 thereafter, the City has the right to unilaterally cancel the contract or de-obligate  
27 funds up to the amount of the under expenditure or underperformance.  
28 Alternatively, upon review and approval of the City, Contractor may be allowed to

1 submit a corrective action plan demonstrating that program performance is  
2 attainable and expenditure levels can be met. At the discretion of the City,  
3 Contractor may be allowed to continue program services.

4 B. Underperformance at the end of the second quarter or any  
5 quarter thereafter, shall permit the City to unilaterally cancel this Contract or, in the  
6 alternative and at the sole discretion of the City, deobligate funds from this Contract  
7 up to the amount of the underexpenditures.

8 5. CONTRACT AMOUNT AND PAYMENT.

9 A. The total amount which shall be payable by City to Contractor  
10 for Contractor's allowable services during the Term shall not exceed One Hundred  
11 Eighty-Four Thousand Dollars (\$184,000).

12 B. The City shall, in due course, reimburse the Contractor for the  
13 actual, allowable, reasonable and necessary costs and expenses incurred by  
14 Contractor in the performance of this Contract which are authorized and approved  
15 by Exhibit "A" and are in accordance with and pursuant to the Prime Contract, to the  
16 extent that such Prime Contract is applicable to the Contractor's performance  
17 hereunder.

18 C. Payment to the Contractor shall be limited to the amounts  
19 specified in Exhibit "A" for the categories, criteria and rates established in said  
20 Exhibit. The allocation of the total contract amount among the items in the Budget  
21 may vary by as much as ten percent (10%) without the approval by Workforce  
22 Innovation Board's Executive Director ("Executive Director"). Additionally,  
23 Contractor may, with the prior written approval of the Executive Director or his  
24 designee, make adjustments within and among the categories of expenditures in  
25 the Budget in excess of ten percent (10%), and modify the performance to be  
26 rendered hereunder as provided in Exhibit "A"; provided, however, that any such  
27 adjustment in expenditures shall not result in an increase in the amount of the total  
28 contract. The agent or representative of Contractor who signs as the maker of

1 checks or drafts or in any manner authorizes the disbursement of said funds or  
2 expenditure of same shall be covered by a blanket fidelity or comprehensive crime  
3 bond regarding the handling of said funds in an amount set out in Section 13,  
4 paragraph E of this Contract.

5 D. Contractor shall not charge nor receive compensation under  
6 this Contract for any services or expenses unless said services or expenses are  
7 directly and exclusively related to the purposes of this Contract, and provided that  
8 payment is not also received by Contractor from some other source for said services  
9 or expenses.

10 E. Disbursement of funds received from the State shall be under  
11 the direction of the City Manager or his designee and shall be in accordance with  
12 the provisions of this Contract and made pursuant to the Prime Contract and any  
13 additional procedures, regulations and reporting requirements which are  
14 established by the City that do not conflict with applicable procedures, regulations  
15 and reporting requirements of the State.

16 F. All payments to Contractor by the City will be based upon  
17 invoices and the necessary supporting documents which the State and the City may  
18 require Contractor to submit. The expenditure of all funds shall be accounted for  
19 promptly and submitted with the funded "Period of Availability" for the program year.  
20 Reimbursement will not be made for claims generated beyond contract end date or  
21 ninety (90) days after the contract end date for properly accrued expenditures.  
22 Contractor shall keep separate detailed accounts for each expenditure for each  
23 component part of this project.

24 G. Public or private non-profit contractor revenues in excess of  
25 costs are considered program income or profits in accordance with Code of Federal  
26 Regulations definition of "Income" pursuant to 20 CFR§683.200(c)(7). When  
27 authorized, program income may be added to the funds committed to the grant  
28 agreement. The program income shall be used for the purposes and under the

1 conditions of the grant agreement or as amended unless the Governor of the State  
2 of California requires that such income be turned over to the State.

3 6. RECORDS.

4 A. Records relating to the performance of this Contract shall be  
5 kept and maintained by Contractor in accordance with the manner and method  
6 prescribed by applicable State regulations and guidelines and City requirements,  
7 and will be current, complete and available for purposes of inspection and audit  
8 during business hours as deemed necessary upon request by representatives of  
9 federal, state and local agencies.

10 B. Contractor shall provide access to all documents and materials  
11 related to this Contract and shall provide any information that the City, or its  
12 designee requires in order to monitor and evaluate Contractor's performance  
13 hereunder. All such records shall be maintained and accessible for a period of  
14 seven (7) years from the expiration or earlier termination of this Contract.

15 7. FINANCIAL REPORTS.

16 A. Contractor shall promptly distribute to the City Manager or his  
17 designee copies of all correspondence including, but not limited to, financial,  
18 operational and performance reports which Contractor submits to or receives from  
19 the State. Contractor shall provide such other reports, documents or information as  
20 may be requested or required by the City or the State within three (3) days of written  
21 request. Upon expiration or earlier termination of this Contract, and within the time  
22 and in the manner prescribed by the City, the Contractor shall perform all necessary  
23 close-out procedures required by the State and the City, including preparation of  
24 close-out reports and transmittal to the City of all documents in the possession of  
25 Contractor which relate to the Conduct of the Program, within the time and in the  
26 manner prescribed by the City. Final payment to the Contractor under this Contract  
27 will be paid only after the City has determined that Contractor has satisfactorily  
28 completed said close-out procedures.

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B. If the Contractor is subject to the Single Audit Act (SAA), the Contractor shall include this Contract within the scope of the SAA audit. A copy of the SAA final audit report shall be delivered by Contractor to the City of Long Beach within thirty (30) calendar days after its request and, in any event, no later than six (6) months after the end of the then-current fiscal year of Contractor. In the event the Contractor fails to comply with this requirement, the Contractor shall be liable for any costs incurred by City for a substitute audit or review.

8. ACCOUNTING PROCEDURES.

A. On a monthly basis, commencing on the last day of the month next succeeding the Effective Date of this Contract, the Contractor will submit an invoice with supporting documentation for payment based upon the cost categories in Exhibit "A". These invoices will be due by the tenth (10th) working day after the end of each month. Contractor shall complete the monthly payment requests in the format required by the City.

B. The Contractor will establish separate account numbers within its accounting system to account for the expenditures and revenues of this Contract. The Contractor's accounting system will be in compliance with all applicable procedures and Federal and State authorities having jurisdiction over this Contract, and shall be consistent with the fiscal and accounting procedures, including accruals set forth herein. Without limiting the generality of the foregoing, the Contractor shall adhere to the following fiscal and accounting procedures:

- i. Maintain a bank account and perform monthly bank reconciliations.
  - (a) Deposit all receipts in the bank account promptly and intact.
  - (b) Do not pay any expense directly out of cash receipts.
  - (c) Maintain bank validated copies for every deposit



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slip in chronological order. Each deposit slip should include sufficient detail to explain the source of the funds being deposited. (This may be done by recording the details on the deposit slip or by attached supporting documentation which may have been received with the receipts).

(d) Disburse all funds by check, preferably signed or approved electronically by two (2) employees, neither of whom is the bookkeeper or the accounting clerk.

ii. Designate specific employees to perform each of the following functions:

(a) Receipt for goods and services provided to Contractor.

(b) Approve the purchase of goods and services for Contractor.

(c) Approve employee time sheets.

(d) Each above function shall be designated to a different employee.

iii. Maintain documented support for every check written which should include:

(a) Original invoice from each vendor.

(b) Indication by signature and date of an authorized employee that the goods or services were received by the Contractor. This may be done on a separate receiving report, a copy of a packing slip or on the invoice itself.

(c) Indication that the goods or services were approved for purchase by an authorized individual. This should be by signature and date and should appear on the invoice or on the purchase order or purchase requisition, if such is used by the

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Contractor.

iv. Maintain a copy of each invoice submitted to the Operations Division with copies of all supporting documents.

v. Maintain the following records in an orderly fashion by grant period or Contractor's fiscal year:

- (a) Bank statements and bank reconciliations.
- (b) Deposit slips and supports.
- (c) Checks and supports.
- (d) Time sheets or documentation to verify

Contractor's labor costs.

- (e) Cash receipts and cash disbursement journals.
- (f) Requests for reimbursement and supports.
- (g) Financial statements.
- (h) Maintain and file all required tax and personnel reports with appropriate agencies.

vi. Contractor must adhere to all audit requirements as outlined in Contractor's respective OMB Circular, 29 CFR 95, and 29 CFR Part 96, and A 133, 29 CFR 97.26 and 29 CFR 95.26 as applicable.

C. All invoices and billings will be considered final and must be submitted within forty-five (45) calendar days from the end of the Term. Resolution of disputed matters must be resubmitted within fifteen (15) calendar days from date mailed to Contractor. City, in its sole discretion, may elect not to pay any invoices or billings submitted after the cut-off date, or if funding is no longer available.

9. INDEPENDENT CONTRACTOR STATUS. It is distinctly understood that in the performance of this Contract, the Contractor shall at all times be considered a wholly independent contractor and that Contractor's obligations to and authority from the City are solely as are preserved by this Contract. Contractor expressly warrants that it will not, at any time, hold itself out or in any manner represent that Contractor or any of its

1 agents, volunteers, subscribers, members, officers or employees are in any manner the  
2 officers, employees or agents of the City or the Pacific Gateway Workforce Innovation  
3 Network (Pacific Gateway), an unincorporated non-profit association. Contractor shall not  
4 have any authority to bind the City or Pacific Gateway at any time or for any purpose.  
5 Contractor nor any of Contractor's officers, employees or agents shall have any power or  
6 authority as agents or employees of the City or Pacific Gateway and shall not be entitled  
7 to any of the rights, privileges or benefits of a City or Pacific Gateway employee.

8           10. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
9 contemplates the personal services of Contractor and Contractor's employees, and the  
10 parties acknowledge that a substantial inducement to City for entering this Agreement was  
11 and is the professional reputation and competence of Contractor and Contractor's  
12 employees. Contractor shall not assign its rights or delegate its duties under this  
13 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
14 of City, except that Contractor may with the prior approval of the City Manager of City,  
15 assign any moneys due or to become due the Contractor under this Agreement. Any  
16 attempted assignment or delegation shall be void, and any assignee or delegate shall  
17 acquire no right or interest by reason of an attempted assignment or delegation.  
18 Furthermore, Contractor shall not subcontract any portion of its performance without the  
19 prior approval of the City Manager or designee, or substitute an approved subconsultant  
20 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
21 prevent Contractor from employing as many employees as Contractor deems necessary  
22 for performance of this Agreement.

23           11. INDEMNITY.

24           A. Contractor shall indemnify, protect and hold harmless City, its  
25 Boards, Commissions, and their officials, employees and agents ("Indemnified  
26 Parties"), from and against any and all liability, claims, demands, damage, loss,  
27 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
28 costs and expenses, including attorneys' fees, court costs, expert and witness fees,

1 and other costs and fees of litigation, arising or alleged to have arisen, in whole or  
2 in part, out of or in connection with (1) Contractor's breach or failure to comply with  
3 any of its obligations contained in this Agreement, including any obligations arising  
4 from the Project's compliance with or failure to comply with applicable laws, including all  
5 applicable federal and state labor requirements including, without limitation, the  
6 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts,  
7 errors, omissions or misrepresentations committed by Contractor, its officers,  
8 employees, agents, subcontractors, or anyone under Contractor's control, in the  
9 performance of work or services under this Agreement (collectively "Claims" or  
10 individually "Claim").

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

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

25 D. The provisions of this Section shall survive the expiration or  
26 termination of this Agreement.

27 12. EMPLOYMENT TRAINING ACT CLAUSES. Contractor shall  
28 administer contract within the policies and procedures mandated by the Workforce

1 Innovation and Opportunity Act of 2014, and Pacific Gateway agrees to comply with the  
2 following contract clauses, as applicable, during the duration of the contract period:

- 3 A. Compliance with awarding agency requirement and/or  
4 regulations related to patent rights, copyrights, and rights in data;
- 5 B. Termination for Cause and for Convenience;
- 6 C. Maintenance of Records for five (5) years;
- 7 D. Access to Contractor's Records (§200.336(a));
- 8 E. Compliance with Equal Employment Opportunity Act provisions  
9 identified in 41 CFR Part 60;
- 10 F. Compliance with Equal Employment Opportunity Act provisions  
11 identified in 41 CFR Part 6;
- 12 G. Compliance with the Contract Hours and Safety Standards Act  
13 (40 U.S.C 3701-3708);
- 14 H. The Clean Air Act and Environmental Protection Agency  
15 regulations;
- 16 I. The State Energy Conservation Plan in compliance with the  
17 Energy Policy and Conservation Act;
- 18 J. The Bryd Anti-Lobbying Amendment;
- 19 K. The Veteran's Priority Provisions;
- 20 L. The Whistleblower Protection;
- 21 M. The Buy American Requirements;
- 22 N. The Debarment and Suspension requirements;
- 23 O. The Copeland "Anti-Kickback" Act;
- 24 P. The Davis-Bacon Act as amended (40 U.S.C 3141-3148);
- 25 Q. Labor Standards Provision;
- 26 R. Rights to Inventions Made Under a Contract or Agreement;
- 27 S. The Solid Waste Disposal Act and 40 CFR Part 247;
- 28 T. Drug Free Workplace Act of 1988; and

1 U. Federal Non-Discrimination Requirements: the  
2 nondiscrimination and equal opportunity provisions found in Section 188 of WIOA  
3 and Title 29 CFR Part 38 prohibit discrimination on the grounds of race; color;  
4 religion; sex (including pregnancy, childbirth, and related medical conditions,  
5 transgender status and gender identity); national origin (including LEP); age;  
6 disability; political affiliation or belief.

7 13. INSURANCE. Concurrent with the execution of this Contract by  
8 Contractor, as a condition precedent to the effectiveness of this Contract, and in partial  
9 performance of the obligations of indemnity assumed by Contractor under Section 11  
10 above, Contractor shall procure and maintain during the Term at Contractor's expense:

11 A. Comprehensive General Liability in an amount not less than Two  
12 Million Dollars (\$2,000,000.00) combined single limit for each occurrence or Four Million  
13 Dollars (\$4,000,000.00) General Aggregate for bodily injury, personal injury and property  
14 damage. The Indemnified Parties shall be covered as insureds in respect to liability arising  
15 out of activities performed by or on behalf of the Contractor and coverage shall be in a form  
16 acceptable to the Risk Manager of the City ("Risk Manager").

17 B. Automobile Liability in an amount not less than Five Hundred  
18 Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and  
19 property damage covering owned, non-owned and hired vehicles.

20 C. Workers' Compensation as required by the Labor Code of the State of  
21 California and Employers' Liability Insurance with limits of one Million Dollars  
22 (\$1,000,000.00) per occurrence.

23 D. Accidental Medical, Death and Dismemberment Insurance for all  
24 participants not entitled to workers' compensation benefits under the provisions of Section  
25 3700 of the Labor Code of the State of California, unless this requirement has been waived  
26 in writing by the Risk Manager. Said insurance shall have limits of not less than One  
27 Hundred Thousand Dollars (\$100,000.00) Accident Medical and Twenty-Five Thousand  
28 Dollars (\$25,000.00) Accidental Death and Dismemberment.

1 E. Blanket Honesty or Comprehensive Crime Bond in an amount of fifty  
2 percent (50%) of sums payable under this Contract, or Twenty-Five Thousand Dollars  
3 (\$25,000.00), whichever is higher, to safeguard the proper handling of funds by those  
4 employee's agents or representatives of the Contractor who sign as the maker of checks  
5 or drafts or in any manner authorize the disbursement or expenditure of said funds.

6 Each insurance policy shall be endorsed to provide that coverage shall not  
7 be cancelled by either party, reduced in amount or in limits, except after thirty (30) days  
8 prior written notice has been given to the City. All such insurance shall be primary and not  
9 contributing to any other insurance or self-insurance maintained by the Indemnified Parties.

10 The insurance required hereunder shall be placed with carriers admitted to  
11 write insurance in California, or carriers with a rating of or equivalent to A:VIII by A.M. Best  
12 Company and may be subject to such self-insurance or deductible as may be approved by  
13 the Risk Manager. Any Contractors which Contractor may use in the performance of  
14 services under this Contract shall be required to maintain insurance in accordance with the  
15 requirements here in Section 13.

16 Contractor shall furnish the City with certificates of insurance and with original  
17 endorsements affecting coverage as required above. The certificates and endorsements  
18 for each insurance policy shall be signed by a person authorized by that insurer to bind  
19 coverage on its behalf. Policies written on a "claims made" basis shall provide for an  
20 extended reporting period of not less than One Hundred Eighty (180) days. No claims  
21 made policies shall be acceptable to City unless the City Manager determines that no  
22 occurrence policy is available in the market for the particular risk being insured. Any  
23 modification or waiver of the insurance requirements contained in this Contract shall only  
24 be made with the written approval of the Risk Manager in accordance with established city  
25 policy.

26 14. DRUG-FREE WORKPLACE. Contractor shall comply with  
27 Government Code Sections 8350 et seq. and 29 CFR Part 98, in matters relating to  
28 providing a drug-free workplace including, but not limited to, the following:

1                   A. Publishing a statement notifying employees that unlawful  
2 manufacture, distribution, dispensation, possession, or use of a controlled  
3 substance is prohibited and specifying actions to be taken against employees for  
4 violations, as required by Government Code Section 8355(a).

5                   B. Establishing a Drug-Free Awareness Program as required by  
6 Government Code Section 8355(b), to inform employees about all of the following:

- 7                   i. The dangers of drug abuse in the workplace,  
8                   ii. The person's or organization's policy of maintaining a  
9 drug-free workplace;  
10                  iii. Any available counseling, rehabilitation and employee  
11 assistance programs, and  
12                  iv. Penalties that may be imposed upon employees for drug  
13 abuse violations.

14                  C. Ensuring that every employee who provides services under this  
15 Contract:

- 16                  i. Will receive a copy of Contractor's drug-free policy  
17 statement, and  
18                  ii. Will agree to abide by the terms of Contractor's  
19 statement as a condition of employment on this Contract:

20                  D. Payments due Contractor may be subject to suspension or  
21 termination for failure to carry out the requirements of Government Code Sections  
22 8350 et seq. and 29 CFR Part 98, Debarment and Suspension; Drug Free  
23 Workplace. As provided in Government Code Section 8357, the City shall not be  
24 required to ensure that Contractor provides a drug-free workplace.

25                  15. NONDISCRIMINATION.

26                  A. In connection with performance of this Agreement and subject  
27 to applicable rules and regulations, Contractor shall not discriminate against any  
28 employee or applicant for employment because of race, religion, national origin,



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

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

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

22 A. During the performance of this Agreement, the Contractor  
23 certifies and represents that the Contractor will comply with the EBO. The  
24 Contractor agrees to post the following statement in conspicuous places at its place  
25 of business available to employees and applicants for employment:

26 "During the performance of a contract with the City of Long Beach, the  
27 Contractor will provide equal benefits to employees with spouses and its employees  
28 with domestic partners. Additional information about the City of Long Beach's Equal

1 Benefits Ordinance may be obtained from the City of Long Beach Business Services  
2 Division at 562-570-6200.”

3 B. The failure of the Contractor to comply with the EBO will be  
4 deemed to be a material breach of the Agreement by the City.

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

9 D. Failure to comply with the EBO may be used as evidence  
10 against the Contractor in actions taken pursuant to the provisions of Long Beach  
11 Municipal Code 2.93 et seq., Contractor Responsibility.

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

17 17. CONFIDENTIALITY.

18 A. Contractor shall keep confidential all financial, operations, and  
19 performance records relating to its performance of this Contract (“Data”) and shall  
20 not disclosed the Data or use the Data directly or indirectly other than in the course  
21 of services provided hereunder. The obligation of confidentiality shall continue  
22 following expiration or earlier termination of this Contract. In addition, Contractor  
23 shall keep confidential all information, whether written or oral, or visual, obtained by  
24 any means whatsoever in the course of Contractor’s performance hereunder for the  
25 same period of time. Contactor shall not disclose Data to any third party, nor use it  
26 for Contractor’s own benefit or the benefit of others without first obtaining the prior  
27 written authorization and consent of the City.

28 B. All Data and other information, in whatever form or medium,

1 compiled or prepared by Contractor in performing its services or furnished to  
2 Contractor by City shall be the property of City and City shall have the unrestricted  
3 right to use or disseminate same without payment of further compensation to  
4 Contractor. Copies of Contractor's work product may be retained by Contractor for  
5 its own records.

6 18. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a  
7 breach of confidentiality with respect to Data that:

8 A. Contractor demonstrates Contractor knew prior to the time City  
9 disclosed it; or

10 B. Is or becomes publicly available without breach of this Contract  
11 by Contractor; or

12 C. A third party who has a right to disclose such information does  
13 so to Contractor without restrictions on further disclosure; or

14 D. Must be disclosed pursuant to subpoena, court order, state or  
15 federal WIOA rules and regulations, federal Department of Labor rules and  
16 regulations, or the rules and regulations of any other governmental agency having  
17 jurisdiction over WIOA administration.

18 19. NOTICES. Any notice or approval required by this Agreement shall  
19 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
20 postage prepaid, addressed to Consultant at the address first stated above, and to the City  
21 at 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a  
22 copy to the Pacific Gateway's Executive Director at 4811 Airport Plaza Drive, Suite 200,  
23 Long Beach CA 90815. Notice of change of address shall be given in the same manner  
24 as stated for other notices. Notice shall be deemed given on the date deposited in the mail  
25 or on the date personal delivery is made, whichever occurs first.

26 20. CONTRACT ADMINISTRATION. The City Manager, or designee, is  
27 authorized and directed, for and on behalf of the City, to administer this Contract and all  
28 related matters, and any decision of the City Manager, or his designee, in connection

1 herewith shall be final.

2           21. CORPORATE STATUS. If the Contractor is a corporation, Contractor  
3 shall, as a condition precedent to the effectiveness of this Contract, submit to City proof of  
4 good standing of the corporate status.

5           22. ENTIRE AGREEMENT. This document fully expresses all  
6 understandings of the parties concerning all matters covered and shall constitute the total  
7 Agreement. Except for the adjustments of Exhibit "A" as provided in Section 5 hereof, no  
8 addition to or alteration of the terms of this Contract whether by written or oral  
9 understanding of the parties, their officers, agents or employees shall be valid unless made  
10 in writing and formally adopted in the same manner as this Contract.

11           23. CAPTIONS AND ORGANIZATION. The various headings and  
12 numbers herein and the grouping of the provisions of this Contract into separate Sections,  
13 paragraphs and clauses are for the purpose of convenience only and shall not be  
14 considered a part hereof, and shall have no effect on the construction or interpretation of  
15 any part of this contract.

16           24. TAX REPORTING. As required by federal and state law, City is  
17 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.  
18 Contractor shall be solely responsible for payment of all federal and state taxes resulting  
19 from payments under this Agreement. Contractor shall submit Contractor's Employer  
20 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not  
21 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.  
22 Contractor acknowledges and agrees that City has no obligation to pay Contractor until  
23 Contractor provides one of these numbers.

24           25. AUTHORIZATION TO EXECUTE. Contractor warrants and affirms to  
25 City that any and all persons signing this Contract are authorized and empowered to so  
26 sign and that the execution of this Contract by such person or persons does bind Contractor  
27 to all terms, covenants and conditions of this Contract.

28           IN WITNESS WHEREOF, the parties hereto have caused these presents to

1 be duly executed with all the formalities required by law on the respective dates set forth  
2 opposite their signatures.

PERFORMANCE EXCELLENCE  
PARTNERS, LLC, a Delaware limited  
liability corporation

3  
4  
5 Feb. 28, 2023

By Rachel E. Ramirez  
Name Rachel E. Ramirez  
Title President & CEO

6  
7  
8 Feb. 28, 2023

By Jaime A. Ramirez  
Name Jaime A. Ramirez  
Title Vice President

9  
10 EXECUTED PURSUANT  
11 TO SECTION 301 OF  
THE CITY CHARTER.

"Contractor"

CITY OF LONG BEACH, a municipal  
corporation

12  
13 March 7, 2023

By Linda J. Jarama  
City Manager

"City"

14  
15 This Contract is approved as to form on March 7, 2023.

16  
17 DAWN MCINTOSH, City Attorney

18 By [Signature]  
19 Deputy

20  
21  
22  
23  
24  
25  
26  
27  
28  
OFFICE OF THE CITY ATTORNEY  
DAWN MCINTOSH, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach CA 90802-4664

# EXHIBIT "A"

# Pacific Gateway Workforce Innovation Network

## Scope of Work (SOW)

<b>Project/Activity</b>	<b>Project Management and Technical Assistance</b>
<b>Contractor</b>	<i>Performance Excellence Partners, LLC. (Hereinafter referred to as "Contractor")</i>
<b>Term</b>	<b>July 13, 2021 to June 30, 2023</b>
<b>Amount/Award</b>	<b>\$184,000.00</b>
<b>Funding Source/ CFDA Number</b>	<b>Workforce Innovation and Opportunity Act (WIOA) Youth, Hilton, and CaliforniansForAll</b>

Administered by the City of Long Beach Economic Development Department (ED), Pacific Gateway, Performance Excellence Partners, LLC, hereinafter referred to as Contractor, shall administer and deliver the services described in this Agreement.

### I. SCOPE OF WORK AND PROJECT BUDGET

Under this Agreement, Contractor agrees to perform the following deliverables as part of the project:

<b>Task</b>	<b>Deliverable/Service</b>	<b>Supporting Documents</b>
<b>Project Management</b>	<ul style="list-style-type: none"> <li>• Manage projects and related specific activities within given constraints of time, budget, and quality;</li> <li>• Consult and lead efforts of Pacific Gateway individual and team associated with project activity;</li> <li>• Ensure alignment with project goals and deliverables;</li> <li>• Attend regular meetings with Pacific Gateway staff and partner agencies.</li> <li>• Coordinate with service providers to connect youth to employment and job training;</li> <li>• Support the design and coordination of outreach and recruitment strategies;</li> <li>• Support and assist program staff in coordinating intake and orientation efforts;</li> </ul>	<b>Project Management Plan; progress reports; emails; agendas; material(s); workplans; calendar invites; RSVP lists; and sign-in sheets.</b>

	<ul style="list-style-type: none"> <li>• Collaborate with subcontractors and program staff to establish and track goals, meet contract measures and outcomes;</li> <li>• Consult with subcontractors and program staff about workforce engagement services, including suitability of placements, and level of intervention a youth may need; and</li> <li>• Participate in team meetings with internal staff and stakeholders, as appropriate, and communicate individually with team members on program activities.</li> </ul>	
<b>Technical Assistance</b>	<ul style="list-style-type: none"> <li>• Lead and/or support project design and management and partner convening and engagement;</li> <li>• Conduct periodic project and post-project reviews to ensure projects are on track;</li> <li>• Ensure project goals and milestones are met; and</li> <li>• Ensure all project documentation is updated and conveyed to relevant stakeholders on time.</li> </ul>	<b>Project Management Plan with projected timelines; progress and tracking reports; summary of data collection; calendar invites; emails; agenda; and sign-in sheets.</b>
<b>Youth Program Management</b>	<ul style="list-style-type: none"> <li>• Coordinate with service providers to connect youth to employment and job training services;</li> <li>• Support the design and coordination of outreach and recruitment strategies;</li> <li>• Support and assist program staff in coordinating intake and orientation efforts;</li> <li>• Collaborate with subcontractors and staff to establish and track goals,</li> </ul>	<b>Project Management Plan; emails; agendas; material(s); sign-in sheets; and calendar invites.</b>



	meet contract measures and outcomes; <ul style="list-style-type: none"> <li>• Consult subcontractors and program staff about workforce engagement services, including suitability of placements, and level of intervention a youth may need; and</li> <li>• Participate in team meetings with program staff and stakeholders, as appropriate, and communicate individually with team members on program activities.</li> </ul>	
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<b>Job Title/Function</b>	<b>Rate Per Hour (RFP No. ED21-016)</b>	<b>Budget</b>
1. Workforce Development Consultant/Subject Matter Expert	\$150.00	WIOA Youth: \$45,000 Hilton: \$45,000 C4A: 30,000
2. Workforce Development Consultant / Project Manager	\$100.00	WIOA Youth: \$10,000 Hilton: \$10,000 C4A: \$10,000
3. Workforce Development Project Specialist	\$75.00	WIOA Youth: \$10,000 Hilton: \$5,000 C4A: \$5,000
4. Graphics Specialist	\$65.00	WIOA Youth: \$2,000 Hilton: \$2,000 C4A: \$2,000
5. Administrative Specialist	\$40.00	WIOA Youth: \$3,000 Hilton: \$3,000 C4A: \$2,000

This Scope of Work can be amended by Pacific Gateway at any point in time to ensure prompt project deliverables.

## II. PROJECT SUMMARY

In accordance with this Agreement, the Contractor shall meet critical objectives to support and manage various programs and projects identified by Pacific Gateway. The overall goal of the Contractor is to set deadlines, assign responsibilities, and monitor and summarize the progress of the project(s). The Contractor shall also provide successful development of the various project's procedures of initiation, planning, execution, regulation, and closure and the guidance of the project team's

operations towards achieving all the agreed-upon goals within the set scope, time, quality, and budget.

### **III. PROJECT PERFORMANCE REQUIREMENTS**

The Contractor must maintain documentation relative to the service deliverables. The Contractor must submit to Pacific Gateway a summary of all project activities. Work may be requested to be performed at the WorkPlace (Long Beach Office), FutureLB (Youth Source Long Beach), virtually, in-person, or at sites in the community. Failing to complete the service deliverables or underperformance by the Contractor, in the agreed timeline, shall permit Pacific Gateway to unilaterally cancel this Agreement or, in the alternative, de-obligate funds up to the amount of the expenditure.

Pacific Gateway may review or monitor, at their discretion, the Contractor to ensure that service deliverables have been rendered in the agreed timeline. The Contractor agrees that if they are unable to fulfill the obligations of this Agreement, they will immediately notify Pacific Gateway in writing.

### **IV. ADMINISTRATIVE AND TECHNICAL ASSISTANCE**

Pacific Gateway may provide administrative and technical assistance, if needed, to the Contractor to ensure that service deliverables are in alignment with project objective. The administrative and technical support includes, but not limited to, project overview, meetings (in-person, phone, email or internet meeting platform), and technical assistance.

### **V. FINANCIAL REPORTING/INVOICING**

Pacific Gateway shall pay the Subcontractor an amount not to exceed **\$184,000.00** for the complete and satisfactory performance of the terms of this Agreement. Payments are subject to the attainment of critical deliverables noted in Section I above. Reports may be requested demonstrating progress toward these deliverables with each invoice, as verified by Pacific Gateway. The Contractor will ensure invoices are accurate and submitted as services are rendered or the project is complete. Invoice(s) must be delivered to Pacific Gateway, 4811 Airport Plaza Drive, Suite 200, Long Beach, CA 90815, *and Attention: Karla Olivas*.

### **VI. COMPLIANCE**

1. Contractor shall adhere to the general conditions as outlined in the City of Long Beach Purchase Order during the duration of the Agreement.
2. Pacific Gateway will directly communicate with the Contractor to resolve any conflict or disputes related to completing the project in a collaborative effort and at the lowest level of dispute resolution possible. Should resolution efforts fail, the dispute shall be referred to the City Attorney, as outlined in the City of Long Beach Purchase Order.

## **VII. GENERAL INFORMATION**

### **A. Unallowable Activities and Costs**

The Contractor shall comply with the following Federal guidelines, or payment may be disallowed:

1. Political Activities: No financial assistance may be provided for any program, which involves political activities.
2. Maintenance of Effort:
  - a. No currently employed worker shall be displaced by any participant (including partial displacement, such as a reduction in hours or non-overtime work, wages or employment benefits).
  - b. No WIOA funds are to be used to assist, promote, or deter union organizing.
  - c. No program shall impair existing contracts for services or collective bargaining agreements without the written concurrence of the labor organization and employer concerned.
  - d. No participant shall be employed or job opening filled when (1) any other individual is on layoff from the same or any substantially equivalent job, or (2) when the employer has terminated employment with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this contract.
  - e. No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.
  - f. No person or organization may charge an individual a fee for the placement or referral of such individuals in or to a training program funded under this Act.

### **B. WIOA Contract Clauses**

The Contractor shall administer Agreement within the policies and procedures mandated by the Workforce Innovation and Opportunity Act of 2014, and agree to comply with the following contract clauses, as applicable, during the duration of the Agreement period:

- a. Compliance with awarding agency requirement and/or regulations related to patent rights, copyrights, and rights in data;
- b. Termination for Cause and for Convenience
- c. Maintenance of Records for seven (7) years 20CFR §200.318(i);
- d. Access to Contractor's Records (§200.336(a))
- e. Compliance with Equal Employment Opportunity Act provisions identified in 41 CFR Part 60;
- f. The Americans with Disabilities Act of 1990;
- g. Compliance with the Contract Hours and Safety Standards Act (40 U.S.C 3701-3708)
- h. The Clean Air Act and Environmental Protection Agency regulations;
- i. The State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act;

- j. The Bryd Anti-Lobbying Amendment;
- k. The Veteran's Priority Provisions;
- l. The Whistleblower Protection;
- m. The Buy American Requirements;
- n. The Debarment and Suspension requirements;
- o. The Copeland "Anti-Kickback" Act;
- p. The Davis-Bacon Act as amended (40 U.S.C 3141-3148);
- q. Labor Standards Provision;
- r. Rights to Inventions Made Under a Contract or Agreement;
- s. The Solid Waste Disposal Act and 40 CFR Part 247; and
- t. Drug Free Workplace Act of 1988

**C. Nepotism**

Contractor may not hire, directly or through an employing agency, a person in an administrative capacity, staff position, or on-the-job training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity for that Contractor.

Immediate family is defined as a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent and stepchild.

**D. Incident Reporting**

All Contractors that receive funding from Pacific Gateway's Workforce Development Board must establish, document, and implement procedures to immediately notify Pacific Gateway Workforce Development Officer of any suspected or proven, fraud, abuse, or other criminal activity involving WIOA-funded activities. For additional procedures for reporting incidents please review the Pacific Gateway Incident Reporting Policy. [*Policy Number: P-WIOA-IR-2.A*]

**E. Whistleblower Protection**

Each contractor and their sub-contractor (if applicable) awarded funds made available under WIOA and similar funds shall promptly refer to the Grantor Office of Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

**F. Nondiscrimination and Equal Opportunity**

The Contractor shall comply will applicable nondiscrimination and equal opportunity provisions of the laws of the United States of America, the State, the City, including the following:

- a. Section 188 of WIOA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity.
- b. Title V of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin.
- c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities.
- d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age.
- e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

The Contractor also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to all the agreements the Contractor makes to carry out the WIOA activity.

#### **VIII. CONTINUATION OF AGREEMENT:**

Continuation of this Agreement is contingent upon the satisfactory achievement of the standards and goals of the Agreement as determined by Pacific Gateway and/or availability of funds. If the Contractor cannot fulfill the obligations of this Agreement, the Contractor must notify Pacific Gateway's Workforce Development Officer in writing immediately.

#### **IX. ADDITIONAL REQUIREMENTS/REFERENCES (CODE OF FEDERAL REGULATIONS)**

Contractor shall adhere to the *Code of Federal Regulations Title 2 Part 200 and 2900 (DOL Exceptions): Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.*