

OFFICE OF THE CITY ATTORNEY
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411 West Ocean Boulevard, 9th Floor
Lona Beach, CA 90802-4664

CONTRACT

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3 THIS CONTRACT ("Contract") is made and entered into, in duplicate,
4 effective as of October 13, 2021, 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 August 24,
6 2021, by and between PACIFIC HARBOR LINE, INC., a Delaware corporation
7 ("Contractor"), with offices located at 705 North Henry Ford Avenue, Wilmington, California
8 90744, and the CITY OF LONG BEACH, a municipal corporation ("City") and administering
9 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 Nos. 17.258, 17.268, 17.278, and 17.277
28 dated _____, are incorporated herein by 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 training and
5 employment services to Long Beach residents;

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 attached hereto as exhibits and
10 incorporated herein and made a 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 August 15, 2018, and unless sooner terminated pursuant to the
11 provisions hereof, shall terminate on December 31, 2021. Either of the parties
12 hereto shall have the right to terminate this Contract in its entirety at any time during
13 the Term for any or no reason whatsoever by giving fifteen (15) days prior written
14 notice of termination to the other party. City shall have the additional right to cancel
15 any part of this Contract at any time during the Term for any reason whatsoever by
16 giving 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 Two Hundred
11 Ninety-Five Thousand Dollars (\$295,000).

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.

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

8 8. ACCOUNTING PROCEDURES.

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

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

22 i. Maintain a bank account and perform monthly bank
23 reconciliations.

24 (a) Deposit all receipts in the bank account promptly
25 and intact.

26 (b) Do not pay any expense directly out of cash
27 receipts.

28 (c) Maintain bank validated copies for every deposit

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

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

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

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

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

15 (c) Approve employee time sheets.

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

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

20 (a) Original invoice from each vendor.

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

25 (c) Indication that the goods or services were
26 approved for purchase by an authorized individual. This should be by
27 signature and date and should appear on the invoice or on the
28 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.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 8th Floor
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

PACIFIC HARBOR LINE, INC., a Delaware corporation

November 1, 2021

By [Signature]
Name Katrina Guzman
Title Manager of Admin of HR

November 1st 2021

By [Signature]
Name Otis C. Cress II
Title President

"Contractor"

CITY OF LONG BEACH, a municipal corporation

November 25 2021

By [Signature]
City Manager

"City"

APPROVED PURSUANT
TO SECTION 001 OF
THE CITY CHARTER.
11-11

This Contract is approved as to form on _____, 2021.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

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

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

PACIFIC HARBOR LINE, INC., a Delaware corporation

November 1, 2021

By [Signature]
Name Katena Guimaraes
Title Manager of Admin of HR

November 19 2021

By [Signature]
Name Chris Craft II
Title President

"Contractor"

CITY OF LONG BEACH, a municipal corporation

_____, 2021

By _____
City Manager

"City"

This Contract is approved as to form on _____, 2021.

CHARLES PARKIN, City Attorney

By _____
Deputy

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

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EXHIBIT "A"

Pacific Gateway Workforce Innovation Network Scope of Service

Training Provider	Pacific Harbor Lines
Term	8/15/18 – 12/31/21
Amount/Award	\$295,000
Master Agreement	CFDA Nos. 17.258,17.278, 17.277, 17.268

Administered by the City of Long Beach, Pacific Gateway Workforce Innovation Network (Pacific Gateway) shall enter into an Agreement with **Pacific Harbor Lines**, hereinafter referred to as the Employer, to administer and deliver the services described in this Agreement.

SCOPE OF SERVICE

ON-THE-JOB TRAINING (OJT)

Pacific Gateway agrees to reimburse the Employer for the extraordinary costs associated with training Pacific Gateway participants. As a requirement of the OJT, the Employer agrees to provide a structured training learning environment providing participants the opportunity to gain the necessary knowledge and skills to be competent.

TRAINING AUTHORIZATION

The Training Provider understands that Pacific Gateway must authorize training before participants are hired by the employer and begin the OJT. Prior to the start of training, Pacific Gateway and the Employer must enter into an OJT Agreement which outlines the occupation the participant will be trained, the training activities, the number of training hours, the participant's hourly rate, and the employer's reimbursement amount.

COST AND REIMBURSEMENT

The total amount reimbursed to the Employer, shall not exceed the amount as documented in the OJT Agreement.

In no event shall Pacific Gateway reimburse the Employer more than the actual and reasonable costs for providing the training. Reimbursement will be limited to costs incurred during the basic 32 – 40 hour work week and deemed to be compensation for the extraordinary costs associated with the training. Reimbursement may not be based on overtime, shift differential, premium pay, and other non-regular wages such as illness, holidays, plant downtime, or other events in which no training occurs. No monies will be paid for those participants who are laid off or terminated by the Employer, through no fault of the participant, prior to completion of training and entering unsubsidized employment.

PERFORMANCE

Participants must be provided benefits and working conditions at the same level and to the same extent as other participants or regular employees working a similar length of time and doing the same type of work.

Participants are required to be monitored by Pacific Gateway staff at the mid-point of the training agreement. An on-site monitoring visit must be conducted and ensure that training objectives are being met according to the participant's training plan. Any issues identified during the monitoring review must be addressed, resolved and documented within a timely manner. Noncompliance or deviations to the OJT Agreement may result in a Corrective Action(s).

PROVIDER ASSURANCES

Participants must be compensated by the Employer at the same rates, including periodic increases, as participants or regular employees who are employed in similar occupations by the same Employer and who have similar training, experience, and skills. Such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (a)(1)) or the applicable State or local minimum wage law.

Participants shall be hired/retained as regular full-time employees upon successful completion of the training. Hiring is subject to the availability of a position and the same conditions of employment as the Employer's other regular employees performing similar work.

The OJT activity shall not be subcontracted. Any attempt to delegate duties under this Agreement shall be void and shall permit Pacific Gateway to immediately terminate this Agreement.

The Employer shall comply with applicable Federal, State, and local nondiscrimination and equal opportunity provisions, including:

- That which prohibits discrimination against all individuals on the grounds of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, political affiliation or belief, and against beneficiaries, applicants, and participants only, on the basis of citizenship status;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age, and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

INVOICING

The Employer shall submit invoice(s) for payment of training costs to Pacific Gateway. The Employer must provide copies of payroll or time and attendance records to support amounts claimed for reimbursement. The On-the-Job Training Placement Form must be submitted with the final invoice. This Form certifies the participant has successfully completed the training activity and has attained necessary skills ensuring proficiency in the occupation for which the training is being provided, and/or within an occupation that requires the same/similar skill standards. Failure to submit the On-the-Job Training Placement form may result in a delay in payment. Employer shall ensure that the participant's name, as well as the funding source, is referenced on the invoice.

Reimbursement for agreements with a duration of or less than eight weeks will be processed upon 30 days of successful retention of the participant.

OJTs with a term duration greater than eight weeks will be processed in two payments: 50% for activities completed at the mid-point of training and 50% upon 30-day successful retention of the participant. Employers will not be penalized for unsuccessful termination(s) and/or retention(s) through no fault of their own.

RECORD MAINTENANCE

Maintenance of records (including books, papers and computer data, timesheets, attendance and payroll records, and canceled checks) to document all costs, direct and indirect, incurred under this Agreement and to account for all money received under this Agreement. All records shall be kept for a period of five (5) years from the date final payment is made on this Agreement. All records regarding the participant shall be made available to representatives of Pacific Gateway, and applicable State and Federal agencies/representatives. The right to the records includes the right to make excerpts, transcripts, and photocopies. The right also includes the reasonable and timely access to personnel for the purpose of interviews and discussions related to the records of the participant.

Maintain the confidentiality of any information regarding participant, or their immediate family, which may be obtained through documents obtained from public agencies, counselors, or any other source. Without permission of Pacific Gateway, such information shall be divulged only as necessary for the performance or evaluation of the Agreement and only to persons having responsibilities under this Agreement.

CONTINUATION OF AGREEMENT

This Agreement is subject to WIOA rules and regulations and the availability of WIOA funding. Modifications to this Agreement may be made to reflect any reduction in fund availability and subsequent additions and/or changes to WIOA rules and regulations. This Agreement shall also be governed by all other applicable laws of the State of California.