

CONTRACT

33830

THIS CONTRACT ("Contract") is entered into, in duplicate, effective as of April 1, 2015, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on February 10, 2015, by and between PERFORMANCE EXCELLENCE PARTNERS, INC., a For-Profit Corporation with offices located at 2134 Main Street, Suite 220, Huntington Beach, CA 92648, ("Contractor") and the CITY OF LONG BEACH, a municipal corporation ("City") and administering entity for Pacific Gateway Workforce Investment Network.

1. Recitals: This Contract is made with reference to the following facts and objectives:

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

1.2 The Application was approved by the State and a Workforce Investment Act subgrant has been executed by and between the State and the City authorizing such programs and providing the funding therefore under Workforce Investment Act Master Subgrant Agreement which has been designated as K594766 CFDA No. 17.259 the ("Prime Contract"); and

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

1.4 City is willing to utilize Contractor to provide various workforce

1 development services to Pacific Gateway and its Board.

2 NOW THEREFORE, in consideration of the terms and conditions contained
3 herein, it is mutually agreed by and between the parties hereto as follows:

4 Section 1. DOCUMENT INCORPORATION.

5 The following documents are attached hereto as exhibits and incorporated
6 herein and made a part hereof by this reference as if set forth in full herein:

7 A. The Prime Contract, Exhibit "A", and any extension or continuation
8 thereof or any grant agreement which is the successor thereto which authorizes a training
9 and employment program for the economically disadvantaged, unemployed and
10 underemployed persons, and the documents incorporated therein and attachments
11 thereto, including the assurances and certifications made by the State to the City.

12 B. Contractor's program description, statement of work performed,
13 Contractor's operation plan for participants, program conditions and standards for
14 Contractor's performance under this Contract (collectively, the "Statement of Work")
15 attached hereto as Exhibit "B".

16 Contractor and City agree to be bound by all the terms, conditions and
17 provisions contained in the Prime Contract, the Application, the Statement of Work,
18 Budget and PPS (collectively, the "Contract Documents").

19 Contractor hereby agrees to assume full responsibility for the performance
20 of the operation, coordination and administration of such program pursuant to all the
21 terms and conditions of Exhibit "B" to the extent that said documents are applicable to the
22 delivery of services by Contractor hereunder; and the parties hereto agree to perform all
23 duties, obligations and tasks to be performed by each party under the Contract
24 Documents.

25 In the event there is any conflict between the provisions of this Contract and
26 the provisions of the Prime Contract, including the attachments thereto and the
27 documents incorporated therein, as presently worded or amended in the future, the
28 parties agree that the provisions of the Prime Contract shall control.

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

3 SECTION 2. TERM.

4 The term of this Contract ("Term") shall be deemed to have commenced as
5 of April 1, 2015, and unless sooner terminated pursuant to the provisions hereof, shall
6 terminate on March 30, 2016. Either of the parties hereto shall have the right to
7 terminate this Contract in its entirety at any time during the Term for any or no reason
8 whatsoever by giving fifteen (15) days prior written notice of termination to the other
9 party. City shall have the additional right to cancel any part of this Contract at any time
10 during the Term for any reason whatsoever by giving fifteen (15) days notice of such
11 cancellation to the Contractor.

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

20 SECTION 3. AWARD UNDER SPECIAL CONDITIONS.

21 The City may award a contract under special conditions if it determines the
22 Contractor as "high risk" under the following categories:

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

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

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

SECTION 4. PERFORMANCE REVIEW.

After each quarter during the Term, the City will conduct a review of Contractor's performance by comparing the Contractor's planned performance and/or contract earning levels with the actual performance and contract earning levels achieved by Contractor. If the Contractor is ten percent (10%) or more below their planned total at the end of the first quarter or any quarter thereafter, the City has the right to unilaterally cancel the contract or de-obligate funds up to the amount of the under expenditure or underperformance. Alternatively, upon review and approval of the City, Contractor may be allowed to submit a corrective action plan demonstrating that program performance is attainable and expenditure levels can be met. At the discretion of the City, Contractor may be allowed to continue program services.

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

///

SECTION 5. CONTRACT AMOUNT AND PAYMENT.

The total amount which shall be payable by City to Contractor for Contractor's allowable services during the Term shall not exceed One Hundred-Fifty Thousand Dollars (\$150,000.00).

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

Payment to the Contractor shall be limited to the amounts specified in Exhibit "B" for the categories, criteria and rates established in said Attachment. The allocation of the total contract amount among the items in the Budget may vary by as much as ten percent (10%) without the approval by Workforce Investment Board's Executive Director ("Executive Director"). Additionally, Contractor may, with the prior written approval of the Executive Director or his designee, make adjustments within and among the categories of expenditures in the Budget in excess of ten percent (10%), and modify the performance to be rendered hereunder as provided in Exhibit "B"; provided, however, that any such adjustment in expenditures shall not result in an increase in the amount of the total contract. The agent or representative of Contractor who signs as the maker of checks or drafts or in any manner authorizes the disbursement of said funds or expenditure of same shall be covered by a blanket fidelity or comprehensive crime bond regarding the handling of said funds in an amount set out in Section 13, paragraph E of this Contract.

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

Disbursement of funds received from the State shall be under the direction

1 of the City Manager or his designee and shall be in accordance with the provisions of this
2 Contract and made pursuant to the Prime Contract and any additional procedures,
3 regulations and reporting requirements which are established by the City that do not
4 conflict with applicable procedures, regulations and reporting requirements of the State.

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

12 Public or private non-profit contractor revenues in excess of costs are
13 considered program income or profits in accordance with Code of Federal Regulations
14 definition of "Income" pursuant to 29 CFR 97.32(2). When authorized, program income
15 may be added to the funds committed to the grant agreement. The program income shall
16 be used for the purposes and under the conditions of the grant agreement or as
17 amended unless the Governor of the State of California requires that such income be
18 turned over to the State.

19 SECTION 6. RECORDS.

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

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

1 earlier termination of this Contract.

2 SECTION 7. FINANCIAL REPORTS.

3 Contractor shall promptly distribute to the City Manager or his designee
4 copies of all correspondence including, but not limited to, financial, operational and
5 performance reports which Contractor submits to or receives from the State. Contractor
6 shall provide such other reports, documents or information as may be requested or
7 required by the City or the State within three (3) days of written request. Upon expiration
8 or earlier termination of this Contract, and within the time and in the manner prescribed
9 by the City, the Contractor shall perform all necessary close-out procedures required by
10 the State and the City, including preparation of close-out reports and transmittal to the
11 City of all documents in the possession of Contractor which relate to the Conduct of the
12 Program, within the time and in the manner prescribed by the City. Final payment to the
13 Contractor under this Contract will be paid only after the City has determined that
14 Contractor has satisfactorily completed said close-out procedures.

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

22 SECTION 8. ACCOUNTING PROCEDURES.

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

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

8 A. Maintain a bank account and perform monthly bank reconciliations.

- 9 1. Deposit all receipts in the bank account promptly and intact.

10 (Do not pay any expense directly out of cash receipts).

11 2. Maintain bank validated copies for every deposit slip in
12 chronological order. Each deposit slip should include sufficient detail to explain
13 the source of the funds being deposited. (This may be done by recording the
14 details on the deposit slip or by attached supporting documentation which may
15 have been received with the receipts).

16 3. Disburse all funds by check, preferably signed by two (2)
17 employees, neither of whom is the bookkeeper or the accounting clerk.

18 B. Designate specific employees to perform each of the following
19 functions:

- 20 1. Receipt for goods and services provided to Contractor.
21 2. Approve the purchase of goods and services for Contractor.
22 3. Approve employee time sheets.
23 4. Each above function shall be designated to a different
24 employee.

25 C. Maintain documented support for every check written which should
26 include:

- 27 1. Original invoice from each vendor.
28 2. Indication by signature and date of an authorized employee

1 that the goods or services were received by the Contractor. This may be done on
2 a separate receiving report, a copy of a packing slip or on the invoice itself.

3 3. Indication that the goods or services were approved for
4 purchase by an authorized individual. This should be by signature and date and
5 should appear on the invoice or on the purchase order or purchase requisition, if
6 such is used by the Contractor.

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

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

- 11 1. Bank statements and bank reconciliations.
- 12 2. Deposit slips and supports.
- 13 3. Checks and supports.
- 14 4. Time sheets or documentation to verify Contractor's labor
15 costs.
- 16 5. Cash receipts and cash disbursement journals.
- 17 6. Requests for reimbursement and supports.
- 18 7. Financial statements.

19 F. Maintain and file all required tax and personnel reports with
20 appropriate agencies.

21 ///

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

25 All invoices and billings will be considered final and must be submitted
26 within forty-five (45) calendar days from the end of the Term. Resolution of disputed
27 matters must be resubmitted within fifteen (15) calendar days from date mailed to
28 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.

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

SECTION 10. ASSIGNMENT AND SUBCONTRACTING.

This Agreement contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to City for entering this Agreement was and is the professional reputation and competence of Consultant and Consultant's employees. Consultant shall not assign its rights or delegate its duties under this Agreement, or any interest in this Agreement, or any portion of it, without the prior approval of City, except that Consultant may with the prior approval of the City Manager of City, assign any moneys due or to become due the Consultant under this Agreement. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation. Furthermore, Consultant shall not subcontract any portion of its performance without the prior approval of the City Manager or designee, or substitute an approved subconsultant or contractor without approval prior to the substitution. Nothing stated in this Section shall prevent Consultant from employing as many

employees as Consultant deems necessary for performance of this Agreement.

SECTION 11. INDEMNIFICATION AND HOLD HARMLESS.

Contractor expressly agrees to defend, protect, indemnify and hold the Network, the City, their respective officers, employees and agents ("Indemnified Parties"), free and harmless from and against any and all claims, damages, expenses, loss or liability of any kind or nature whatsoever growing out of, or resulting from the acts or omissions of Contractor, its officers, agents or employees in the performance of this Contract. Contractor shall, at its own cost, expense and risk, defend all claims or legal actions that may be instituted against either the Indemnified Parties and Contractor shall pay any settlement entered into or satisfy any judgment that may be rendered against either the Indemnified Parties as a result of said acts or omissions of Contractor, its officers, agents or employees in the performance of this Contract.

SECTION 12. EMPLOYMENT TRAINING ACT CLAUSES.

Contractor shall administer contract within the policies and procedures mandated by the Workforce Investment Act of 1998 and the Network and agrees to comply with the following contract clauses, as applicable, during the duration of the contract period:

1. Compliance with requirements and/or regulations related to patent rights, copyrights, and rights in data;
2. Maintenance of records for 7 years;
3. The Equal Employment Opportunity Act provisions;
4. The Americans with Disabilities Act of 1990;
5. The Contract Work Hours and Safety Standards Act;
6. The Clean Air Act and Environmental Protection Agency regulations;
7. The Energy Policy Conservation Act;
8. The Bryd Anti-Lobbying Amendment;
9. Veteran's Priority Provisions;
10. Whistle Blower Protection;

11. Buy American Requirements.

SECTION 13. INSURANCE.

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

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

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

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

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

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

1 or drafts or in any manner authorize the disbursement or expenditure of said funds.

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

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

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

23 SECTION 14. DRUG-FREE WORKPLACE.

24 Contractor shall comply with Government Code Sections 8350 et seq. and
25 29 CFR Part 98, in matters relating to providing a drug-free workplace including, but not
26 limited to, the following:

27 A. Publishing a statement notifying employees that unlawful
28 manufacture, distribution, dispensation, possession, or use of a controlled

1 substance is prohibited and specifying actions to be taken against employees for
2 violations, as required by Government Code Section 8355(a).

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

- 5 1. The dangers of drug abuse in the workplace,
- 6 2. The person's or organization's policy of maintaining a drug-
7 free workplace;
- 8 3. Any available counseling, rehabilitation and employee
9 assistance programs, and
- 10 4. Penalties that may be imposed upon employees for drug
11 abuse violations.

12 C. Ensuring that every employee who provides services under this
13 Contract:

- 14 1. Will receive a copy of Contractor's drug-free policy statement,
15 and
- 16 2. Will agree to abide by the terms of Contractor's statement as
17 a condition of employment on this Contract:

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

23 SECTION 15. NONDISCRIMINATION.

24 A. In connection with performance of this Agreement and subject
25 to applicable rules and regulations, Consultant shall not discriminate against any
26 employee or applicant for employment because of race, religion, national origin,
27 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
28 disability. Consultant shall ensure that applicants are employed, and that

1 employees are treated during their employment, without regard to these bases.
2 These actions shall include, but not be limited to, the following: employment,
3 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or
4 termination, rates of pay or other forms of compensation, and selection for training,
5 including apprenticeship.

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

18 SECTION 16. EQUAL BENEFITS ORDINANCE.

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

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

27 "During the performance of a contract with the City of Long Beach,
28 the Consultant will provide equal benefits to employees with spouses and

1 its employees with domestic partners. Additional information about the
2 City of Long Beach's Equal Benefits Ordinance may be obtained from the
3 City of Long Beach Business Services Division at 562-570-6200."

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

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

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

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

19 SECTION 17. CONFIDENTIALITY.

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

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

6 SECTION 18. BREACH OF CONFIDENTIALITY.

7 Contractor shall not be liable for a breach of confidentiality with respect to
8 Data that:

9 (a) Contractor demonstrates Contractor knew prior to the time
10 City disclosed it; or

11 (b) Is or becomes publicly available without breach of this
12 Contract by Contractor; or

13 (c) A third party who has a right to disclose such information does
14 so to Contractor without restrictions on further disclosure; or

15 (d) Must be disclosed pursuant to subpoena, court order, state or
16 federal WIA rules and regulations, federal Department of Labor rules and
17 regulations, or the rules and regulations of any other governmental agency having
18 jurisdiction over WIA administration.

19 SECTION 19. NOTICES.

20 All notices required or given pursuant to the provisions hereof may be
21 served either by: (1) enclosing the same in a sealed envelope addressed to the party
22 intended to receive the same at the address indicated herein and deposited postage
23 prepaid, in the U.S. Postal Service as certified mail, return receipt requested, or (2)
24 personal service. Such notices shall be effective on the date personal service is effected
25 or the date of the signature on the return receipt. For the purposes hereof, the address of
26 the City and the proper party to receive any such notices on its behalf is the City
27 Manager, City Hall, 333 West Ocean Boulevard, Long Beach, California, 90802; and the
28 Contractor's address for service of any such notices shall be 2134 Main Street, Suite

220, Huntington Beach, CA 92648, attn: Rachel Ramirez, Telephone (714) 374-1140,
Fax No. (714) 374-1120, email, rachelm@performexcel.com.

SECTION 20. CONTRACT ADMINISTRATION.

The City Manager, or designee, is authorized and directed, for and on
behalf of the City, to administer this Contract and all related matters, and any decision of
the City Manager, or his designee, in connection herewith shall be final.

SECTION 21. CORPORATE STATUS.

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

SECTION 22. ENTIRE AGREEMENT.

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

SECTION 23. CAPTIONS AND ORGANIZATION.

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

SECTION 24. TAX REPORTING.

As required by federal and state law, City is obligated to and will report the
payment of compensation to Contractor on Form 1099-Misc. Contractor shall be solely
responsible for payment of all federal and state taxes resulting from payments under this
Agreement. Contractor shall submit Contractor's Employer Identification Number (EIN),
or Contractor's Social Security Number if Contractor does not have an EIN, in writing to

1 City's Accounts Payable, Department of Financial Management. Contractor
2 acknowledges and agrees that City has no obligation to pay Contractor until Contractor
3 provides one of these numbers.

4 SECTION 25. AUTHORIZATION TO EXECUTE.

5 Contractor warrants and affirms to City that any and all persons signing this
6 Contract are authorized and empowered to so sign and that the execution of this Contract
7 by such person or persons does bind Contractor to all terms, covenants and conditions of
8 this Contract.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

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

PERFORMANCE EXCELLENCE PARTNERS,
INC., a For-Profit Corporation

4
5
6 Dated: March 9, 2015

By Rachel S. Harris

Title President & CEO

8 Dated: March 9, 2015

By Chun-Bey

Title Director of Operations

"Contractor"

CITY OF LONG BEACH, a municipal
corporation

14 Dated: April 20, 2015

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

"City" Assistant City Manager

18 The foregoing Contract is hereby approved as to form this 27 day of
19 March, 2015.

CHARLES PARKIN, City Attorney

23 By [Signature]
24 Deputy

EXHIBIT A

Cleared
CSGDist WIA 4-17-14

WIA SUBGRANT AGREEMENT

City of Long Beach dba PacGtwy

REGISTRATION NO: K594766
MODIFICATION NO: NEW
SUBGRANTEE CODE: LBCSUBGRANTOR: State of California
Employment Development Dept.
Workforce Services Division
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001SUBGRANTEE: City of Long Beach dba PacGtwy
3447 ATLANTIC AVENUE
LONG BEACH, CA 90807

GOVERNMENTAL ENTITY: YES

This Subgrant Agreement is entered into by and between the State of California, Employment Development Department, hereinafter the Subgrantor, and the City of Long Beach dba PacGtwy, hereinafter the Subgrantee. The Subgrantee agrees to operate a program in accordance with the provisions of this Subgrant and to have an approved WIA Local Plan for the above named Subgrantor filed with the Subgrantor pursuant to the Workforce Investment Act (WIA). This modification consists of this sheet and those of the following exhibits, which are attached hereto and by this reference made a part hereof:

Funding Detail Chart
General Provisions and standards of Conduct
Title I-Y (WIA TITLE I YOUTH FORMULA)

Exhibit AA, pages 1 through 1
Exhibit BB, pages 1 through 14
Exhibit DD, pages 1 through 1

APPROVED AS TO FORM

May 21, 2014
CHARLES PARKIN, City Attorney

By Kendra L. Carney
KENDRA L. CARNEY
DEPUTY CITY ATTORNEY

ALLOCATION(s):

The Subgrantor agrees to reimburse the Subgrantee
not to exceed the amount listed hereinafter "TOTAL":

PRIOR AMOUNT: \$0.00
INCREASE/DECREASE: \$2,044,449.00
TOTAL: \$2,044,449.00

TERMS OF AGREEMENT:

From 04/01/2014 to 06/30/2016

Terms of Exhibits are as
designated on each exhibit

PURPOSE: To initiate the Program Yeay (PY) 2014-15 WIA Subgrant and add WIA Youth formula funding
under grant code 301. The term of these funds are from 04/01/14 to 06/30/16.

APPROVED FOR SUBGRANTOR (EDD) (By Signature)

Name and Title
JOSE LUIS MARQUEZ
CHIEF
WORKFORCE SERVICES DIVISION

I hereby certify that to my knowledge, the budgeted
funds are available for the period and purpose of
expenditures as stated herein:

Gabriel Long
Signature of EDD Accounting Officer

APPROVED FOR SUBGRANTEE (By Signature)

Name and Title

Patrick H. West
Assistant City Manager
PATRICK H. WEST
CITY MANAGER

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement does not fall within the meaning of Section
10295 of Chapter 2 of Part 2 of Division 2 of the Public
Contract Code of the State of California and pursuant to
58 OPS Cal. Atty. Gen. 586, is exempt from review or approval
of the Dept. of General Services and the Dept. of Finance:

Xochitl Munoz
Signature of EDD Contract Officer

WIA
SUBGRANT AGREEMENT
FUNDING DETAIL SHEET

Exhibit AA
Page 1 of 1

SUBGRANTEE NAME: City of Long Beach dba PacGtwy

SUBGRANT NO: K594766
MODIFICATION NO: NEW

I. ALLOCATION

FUNDING SOURCE	PRIOR AMOUNT	INCREASE	DECREASE	ADJUSTED ALLOCATION
TITLE I-Y: YOUTH				
9610 16 WIA TITLE I YOUTH FORMULA (301) : 04/01/2014 to 06/30/2016 Prog/Element 61/ 00 Ref 101 Fed Catlg 417259	\$0.00	\$2,044,449.00	\$0.00	\$2,044,449.00
TOTAL TITLE I-Y	\$0.00	\$2,044,449.00	\$0.00	\$2,044,449.00
GRAND TOTAL:	\$0.00	\$2,044,449.00	\$0.00	\$2,044,449.00

1. Compliance

In performance of this subgrant agreement, Subgrantee will fully comply with:

- a). The provisions of the Workforce Investment Act (WIA) and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b). All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement the WIA.
- c). The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to Department of Labor (DOL) job training programs
- d). Subgrantee will ensure diligence in managing programs under this subgrant agreement, including performing appropriate monitoring activities and taking prompt corrective action against known violations of the WIA. Subgrantee agrees to conform to the provisions of the WIA and the contract requirements as referenced in 29 CFR Part 95, Appendix A and 29 CFR, Part 97.36(i)(1-13).

This subgrant agreement contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This subgrant agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the Subgrantor and the Subgrantee. Subgrantee represents and warrants it is free to enter into and fully perform this subgrant agreement.

2. Certification/Assurances

Except as otherwise indicated, the following certifications apply to all Subgrantee's.

- a). Corporate Registration: The Subgrantee, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b). The Subgrantee agrees to comply with the Americans with Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA. (42 U.S.C.12101 et seq.
- c). Sectarian Activities: The Subgrantee certifies that this subgrant agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- d). National Labor Relations Board: The Subgrantee (if not a public entity), by signing this subgrant agreement, does swear under penalty of perjury, that no more than one final unappeasable finding of contempt of court by a federal court has been issued against the Subgrantee within the immediately preceding two-year period because of Subgrantee's failure to comply with an order of a federal court, which orders the Subgrantee to comply with an order of the National Labor Relations Board (PCC10296).
- e). Prior Findings: Subgrantee, by signing this subgrant agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous subgrant agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- f). Drug-Free Workplace Certification: By signing this subgrant agreement the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - (1). Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (2). Establish a Drug-Free Awareness Program as required to inform employees about:
 - the dangers of drug abuse in the workplace;
 - the person's or organization's policy of maintaining a drug-free workplace;
 - any available counseling, rehabilitation and employee assistance programs; and,
 - penalties that may be imposed upon employees for drug abuse violations.
 - (3). Every employee who works on this subgrant agreement will:
 - receive a copy of the company's drug-free policy statement; and,
 - agree to abide by the terms of the company's statement as a condition of employment on the subgrant/contract.
- g). Child Support Compliance Act: In accordance with the Child Support Compliance Act, the

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB

Page 2 of 14

SUBGRANT NO: K594766

MODIFICATION NO: NEW

Subgrantee recognizes and acknowledges:

- (1). The importance of child and family support obligations and shall fully comply with applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by the California Employment Development Department (EDD).
- h). Debarment and Suspension Certification: By signing this subgrant agreement, the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98.510, that the prospective participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:
 - (1). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
 - (2). Have not within a three-year period preceding this subgrant agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
 - (3). Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in Section 2 of this certification.
 - (4). Have not within a three year period preceding this subgrant agreement had one or more public transactions (federal, state or local) terminated for cause of default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

- i). Lobbying Restrictions: By signing this subgrant agreement the Subgrantee hereby assures and certifies to the lobbying restrictions which are codified in the DOL regulations at 29 CFR Part 93.
 - (1). No federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (2). If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this subgrant agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - (3). The undersigned shall require that the language of the lobbying restrictions be included in the award documents for subgrant agreement transactions over \$100,000 (per OMB) at all tiers (including subgrant agreements, contracts and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
 - (4). This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

j). Priority Hiring Considerations:

If this subgrant includes services in excess of \$200,000, the Subgrantee shall give priority consideration in filling vacancies in positions funded by the subgrant to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code 10353.

k). Sweatfree Code of Conduct:

- 1). All Subgrantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other

than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Subgrantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

- 2). The Subgrantee agrees to cooperate fully in providing reasonable access to the subgrantees' records, documents, agents or employees, or premises if reasonably required by authorized officials of the Subgrantor, the Department of Industrial Relations, or the Department of Justice to determine the subgrantees' compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.
- 1). Unenforceable Provision: In the event that any provision of this subgrant agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this subgrant agreement have force and effect and shall not be affected hereby.
- m). Nondiscrimination Clause
 - 1). The conduct of the parties to this subgrant agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated there under and the provisions of WIA, Section 188.
 - (a). As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis 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.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements that grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.
 - (b). This Subgrantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the subgrant agreement.
 - (c). This Subgrantee agrees to conform to nondiscrimination provisions of the WIA and other federal nondiscrimination requirements referenced in 29 CFR, Part 37.

n). Indemnification:

- 1). The following provision applies only if the Subgrantee is a governmental entity:

Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.
- 2). The following provision applies only if the Subgrantee is a non-governmental entity:

The Subgrantee agrees to the extent permitted by law, to indemnify, defend and save harmless the Subgrantor, its officers, agents and employees from any and all claims and

losses accruing or resulting to any and all contractors, subcontractors, materials persons, laborers and any other persons, firms or corporations, furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any persons, firms or corporations which may be injured or damaged by the Subgrantee in the performance of this subgrant agreement.

Failure to comply with all requirements of the certifications in Section 2 may result in suspension of payment under this subgrant agreement or termination of this subgrant agreement or both, and the Subgrantee may be ineligible for award of future state subgrant agreements/contracts if the department determines that any of the following has occurred: (1) false information on the certifications, or (2) violation of the terms of the certifications by failing to carry out the requirements as noted above.

o). Salary and Bonus Limitations:

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the States, the compensation levels for programs involved including Employment and Training Administration programs. See Training and Employment Guidance Letter number 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

p). Clean Air and Water Act:

For subgrants in excess of \$100,000, compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 {h}); Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR 15, revised as of July 1, 1989).

3. Standards of Conduct

The following standards apply to all Subgrantees.

- a). General Assurance: Every reasonable course of action will be taken by the Subgrantee in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This subgrant agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. Subgrantee agrees to conform to the nondiscrimination requirements as referenced in WIA, Section 188.
- b). Avoidance of Conflict of Economic Interest: An executive or employee of the Subgrantee, an elected official in the area or a member of the Local Board, will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the Subgrantee or Subgrantor: Supplies, materials, equipment or services purchased with subgrant agreement funds will be used solely for purposes allowed under this subgrant agreement. No member of the Local Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.

4. Coordination

Subgrantee will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other programs under the WIA, including the Wagner-Peyser Act, Title 38 of the United States Code, and other employment and training programs at the state and local level.

Subgrantee will consult with the appropriate labor organizations and/or employer representatives in the design, operation or modification of the programs under this subgrant agreement.

5. Subcontracting

- a). Any of the work or services specified in this subgrant agreement which will be performed by other than by the Subgrantee will be evidenced by a written agreement specifying the terms and conditions of such performance.
- b). The Subgrantee will maintain and adhere to an appropriate system, consistent with federal,

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 5 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

state and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.

- c). The system for awarding contracts will contain safeguards to insure that the Subgrantee does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

6. Insurance

Except for city and county governmental entities, Subgrantees must provide the Subgrantor evidence of the coverage specified in a, b, c and d below. The evidence of coverage shall include the registration number of the subgrant agreement for identification purposes.

- a). Subgrantee will obtain a fidelity bond in an amount of not less than _____, prior to the receipt of funds under this subgrant agreement. If the bond is canceled or reduced, Subgrantee will immediately so notify the Subgrantor. In the event the bond is canceled or revised, the Subgrantor will make no further disbursements until it is assured that adequate coverage has been obtained.
- b). Subgrantee will provide general liability insurance with a combined limit of \$1,000,000 or public liability and property damage coverage with a combined limit of not less than \$1,000,000.
- c). Subgrantee will provide broad form automobile liability coverage with limits as set forth in (b) above, which applies to both owned/leased and non-owned automobiles used by the Subgrantee or its agents in performance of this subgrant agreement, or, in the event that the Subgrantee will not utilize owned/leased automobiles but intends to require employees, trainees or other agents to utilize their own automobiles in performance of this subgrant agreement, Subgrantee will secure and maintain on file from all such employees, trainees or agents a self-certification of automobile insurance coverage.
- d). Subgrantee will provide Worker's Compensation Insurance, which complies with provisions of the California Labor Code, covering all employees of the Subgrantee and all participants enrolled in work experience programs. Medical and Accident Insurance will be carried for those participants not qualifying as "employee" (Section 3350, et seq. of the California Labor Code) for Worker's Compensation.
- e). The Subgrantor will be named as "Certificate Holder" of policies secured in compliance with paragraphs a-d above and will be provided certificates of insurance or insurance company "binders" prior to any disbursement of funds under this subgrant agreement, verifying the insurance requirements have been complied with. The coverage noted in b and c above must contain the following clauses:
 - (1). Insurance coverage will not be canceled or changed unless 30 days prior to the effective date of cancellation or change written notice is sent by the Subgrantee to:

Employment Development Department
WIA - Financial Management Unit
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001
 - (2). State of California, its officers, agents, employees and servants are included as additional insured, but only insofar as the operations under this subgrant agreement are concerned.
 - (3). The State of California is not responsible for payment of premiums or assessments on this policy

7. Resolution

A county, city, district or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of this subgrant agreement. Preferably resolutions should authorize a designated position rather than a named individual.

8. Funding

It is mutually understood between the parties that this subgrant agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the subgrant agreement was executed after that determination was made.

This subgrant agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate state fiscal years covered by this subgrant agreement for the purposes of this program and; (2) sufficient funds available to the state by the United States Government for the fiscal years covered by this subgrant agreement for the purposes of this program. In addition, this subgrant agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 6 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

Congress and Legislature which may affect the provisions, terms, or funding of this subgrant agreement in any manner.

- a). At the expiration of the terms of this subgrant agreement or upon termination prior to the expiration of this subgrant agreement, funds not obligated for the purpose of this subgrant agreement will be immediately remitted to the Subgrantor, and no longer available to the Subgrantee.
- b). The Subgrantor retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing the Subgrantee is given prompt notice and the opportunity for an informal review of the Subgrantor's decision. The Chief Deputy Director or his designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of the Subgrantee or a Subcontractor of the Subgrantee to comply with the provisions of this subgrant agreement, or with the WIA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.
- c). The local Chief Elected Official (CEO) of a unit of general local government designated as a Local Workforce Investment Area (LWIA) shall be liable to the EDD for all funds not expended in accordance with WIA, and shall return to the EDD all of those funds. If there is more than one unit of general local government in a LWIA, the CEO(s) will be the individual(s) designated under an agreement executed by the CEO(s) of the local units of government. The CEO(s) designated under the agreement shall be liable to the EDD for all funds not expended in accordance with the WIA, and shall return to the EDD all of those funds.

9. Accounting and Cash Management

- a). Subgrantee will comply with controls, record keeping and fund accounting procedure requirements of WIA, federal and state regulations and directives to ensure the proper disbursement of, and accounting for, program funds paid to the Subgrantee and disbursed by the Subgrantee, under this subgrant agreement.
- b). Subgrantee will submit requests for cash to coincide with immediate cash needs and assure that no excess cash is on deposit in their accounts or the accounts of any sub-contracting service provider in accordance with procedures established by the Subgrantor. Failure to adhere to these provisions may result in suspending cash draw down privileges and providing funds through a reimbursement process.
- c). The Subgrantor retains the authority to adjust specific amounts of cash requested if the Subgrantor's records and subsequent verification with the Subgrantee indicate that the Subgrantee has an excessive amount of cash in its account.
- d). Income (including interest income) generated as a result of the receipt of WIA activities, will be utilized in accordance with policy and procedures established by the Subgrantor. Subgrantee will account for any such generated income separately.
- e). Subgrantee shall not be required to maintain a separate bank account but shall separately account for WIA funds on deposit. All funding under this subgrant agreement, will be made by check or wire transfer payable to the Subgrantee for deposit in Subgrantee's bank account or city and county governmental bank accounts. To provide for the necessary and proper internal controls, funds should be withdrawn and disbursed by no less than two representatives of the Subgrantee. The Subgrantor will have a lien upon any balance of WIA funds in these accounts, which will take priority over all other liens or claims.

10. Amendments

This subgrant agreement may be unilaterally modified by the Subgrantor under the following circumstances:

- a). There is an increase or decrease in federal or state funding levels.
- b). A modification to the Subgrant is required in order to implement an adjustment to a Subgrantee's plan.
- c). Funds awarded to the Subgrantee have not been expended in accordance with the schedule included in the approved Subgrantee's plan. After consultation with the Subgrantee, the Subgrantor has determined that funds will not be spent in a timely manner, and such funds are for that reason to the extent permitted by and in a manner consistent with state and federal law, regulations and policies, reverting to the Subgrantor.
- d). There is a change in state and federal law or regulation requiring a change in the provisions of this subgrant agreement.
- e). An amendment is required to change the Subgrantees' name as listed on this subgrant agreement. Upon receipt of legal documentation of the name change the state will process the amendment. Payment of invoices presented with a new name cannot be paid prior to

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 7 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

approval of said amendment.

Except as provided above, this subgrant agreement may be amended only in writing by the mutual agreement of both parties.

11. Reporting

Subgrantee will compile and submit reports of activities, expenditures, status of cash and closeout information by the specified dates as prescribed by the Subgrantor. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this agreement will result in funds not being released.

12. Termination

This subgrant agreement may be terminated in whole or in part for either of the two following circumstances:

- a). Termination for Convenience - Either the Subgrantor or the Subgrantee may request a termination, in whole or in part, for convenience. The Subgrantee will give a ninety- (90) calendar-day advance notice in writing to the Subgrantor. The Subgrantor will give a ninety (90) calendar-day advance notice in writing to the Subgrantee.
- b). Termination for Cause - The Subgrantor may terminate this subgrant agreement in whole or in part when it has determined that the Subgrantee has substantially violated a specific provision of the WIA regulations or implementing state legislation and corrective action has not been taken.
 - (1). All notices of termination must be in writing and be delivered personally or by deposit in the U. S. Mail, postage prepaid, "Certified Mail-Return Receipt Requested", and will be deemed to have been given at the time of personal delivery or of the date of postmark by the U. S. Postal Service.

Notices to the Subgrantee will be addressed to:

Erick Serrato, Acting Executive Director
City of Long Beach
Administering Entity for Pacific Gateway
3447 Alantic Ave.
Long Beach, CA 90807

Notices to the Subgrantor will be addressed to:

Employment Development Department
WorkForce Services Division
Financial Management Unit
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001

13. Records

- a). If participants are served under this subgrant agreement, the Subgrantee will establish a participant data system as prescribed by the Subgrantor.
- b). Subgrantee will retain all records pertinent to this subgrant agreement for a period of three years from the date of final payment of this subgrant agreement. If, at the end of three years, there is litigation or an audit involving those records, the Subgrantee will retain the records until the resolution of such litigation or audit.
Refer to 29 CFR, Part 97.42(b)(2) or 29 CFR, Part 95.53(b)(1).
- c). The Subgrantor and/or the U. S. DOL, or their designee (refer to 29 CFR, Part 95.48(d) or 29 CFR Part 97.36(i)(10)) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this subgrant agreement. For purposes of this section, "access to" means that the Subgrantee shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. The Subgrantee shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the subgrant. Subgrantee's performance under the terms and conditions herein specified will be subject to an evaluation by the Subgrantor of the adequacy of the services performed, timeliness of response and a general impression of the competency of the firm and its staff.

14. Audits

- a). The Subgrantee will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. All governmental and non-profit organizations must follow the audit requirements of OMB (single audit or program-specific audit requirement) Circular A-133 (29 CFR 97.26 and 29 CFR 95.26).

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB

Page 8 of 14

SUBGRANT NO: K594766

MODIFICATION NO: NEW

- b). The Subgrantee and/or auditors performing monitoring or audits of the Subgrantee or its sub-contracting service providers will immediately report to the Subgrantor any incidents of fraud, abuse or other criminal activity in relation to this subgrant agreement, the WIA, or its regulations.

15. Disallowed Costs

Except to the extent that the state determines it will assume liability, the Subgrantee will be liable for and will repay, to the Subgrantor, any amounts expended under this subgrant agreement found not to be in accordance with WIA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIA.

16. Conflicts

- a). Subgrantee will cooperate in the resolution of any conflict with the U. S. DOL that may occur from the activities funded under this agreement.
- b). In the event of a dispute between the Subgrantor and the Subgrantee over any part of this subgrant agreement, the dispute may be submitted to non-binding arbitration upon the consent of both the Subgrantor and the Subgrantee. An election for arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

17. Grievances and Complaint System

Subgrantee will establish and maintain a grievance and complaint procedure in compliance with the WIA, federal regulations and state statutes, regulations and policy.

18. Property

All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by the Subgrantee under this subgrant agreement, will be disposed of in accordance with the direction of the Subgrantor. In addition, any tools and/or equipment furnished to the Subgrantee by the Subgrantor and/or purchased by the Subgrantee with funds pursuant to this subgrant agreement will be limited to use within the activities outlined in this subgrant agreement and will remain the property of the United States Government and/or the Subgrantor. Upon termination of this subgrant agreement, Subgrantee will immediately return such tools and/or equipment to the Subgrantor or dispose of them in accordance with the direction of the Subgrantor.

19. Intellectual Property Provisions

a). Federal Funding

In any subgrant funded in whole or in part by the federal government, Subgrantor may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the subgrant, except as provided in 37 Code of Federal Regulations part 401.14. However, pursuant to 29 CFR section 97.34 the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

b). Ownership

- (1). Except where Subgrantor has agreed in a signed writing to accept a license, Subgrantor shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement.
- (2). For the purposes of this subgrant agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by Subgrantor, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

- (a). For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB

Page 9 of 14

SUBGRANT NO: K594766

MODIFICATION NO: NEW

are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.

- (3). In the performance of this subgrant agreement, Subgrantee may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this subgrant agreement. In addition, under this subgrant agreement, Subgrantee may access and utilize certain of Subgrantor's intellectual property in existence prior to the effective date of this subgrant agreement. Except as otherwise set forth herein, Subgrantee shall not use any of Subgrantor's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of Subgrantor. Except as otherwise set forth herein, neither the Subgrantee nor Subgrantor shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this subgrant agreement, Subgrantee accesses any third-party Intellectual Property that is licensed to Subgrantor, Subgrantee agrees to abide by all license and confidentiality restrictions applicable to Subgrantor in the third-party's license agreement.
 - (4). Subgrantee agrees to cooperate with Subgrantor in establishing or maintaining Subgrantor's exclusive rights in the Intellectual Property, and in assuring Subgrantor's sole rights against third parties with respect to the Intellectual Property. If the Subgrantee enters into any agreements or subcontracts with other parties in order to perform this subgrant agreement, Subgrantee shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph nineteen a) through nineteen i). Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to Subgrantor all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, subgrantee or subgrantor and which result directly or indirectly from this subgrant agreement or any subcontract.
 - (5). Pursuant to paragraph nineteen (b) (4) of the Intellectual Property Provisions in Exhibit BB to this subgrant agreement, the requirement for the Subgrantee to include all Intellectual Property Provisions of paragraph nineteen a) through nineteen i) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to subgrant agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
 - (6). Subgrantee further agrees to assist and cooperate with Subgrantor in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce Subgrantor's Intellectual Property rights and interests.
- c). Retained Rights / License Rights
- (1). Except for Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement, Subgrantee shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this subgrant agreement. Subgrantee hereby grants to Subgrantor, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of Subgrantee's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this subgrant, unless Subgrantee assigns all rights, title and interest in the Intellectual Property as set forth herein.
 - (2). Nothing in this provision shall restrict, limit, or otherwise prevent Subgrantee from using any ideas, concepts, know-how, methodology or techniques related to its performance under this subgrant agreement, provided that Subgrantee's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of Subgrantor or third party, or result in a breach or default of any provisions of paragraph nineteen a) through nineteen i) or result in a breach of any provisions of law relating to confidentiality.
- d). Copyright
- (1) Subgrantee agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph nineteen (b) (2) (a) of authorship made by or on behalf of

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 10 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

Subgrantee in connection with Subgrantee's performance of this subgrant agreement shall be deemed "works made for hire." Subgrantee further agrees that the work of each person utilized by Subgrantee in connection with the performance of this subgrant agreement will be a "work made for hire," whether that person is an employee of Subgrantee or that person has entered into an agreement with Subgrantee to perform the work. Subgrantee shall enter into a written agreement with any such person that: (i) all work performed for Subgrantee shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to Subgrantor to any work product made, conceived, derived from or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement. Refer to 29 CFR, Part 95, Appendix A 5 or Part 97.34.

- (2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this subgrant agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement may not be reproduced or disseminated without prior written permission from Subgrantor.

e). Patent Rights

With respect to inventions (refer to 29 CFR, 97.36(i)(8)) made by Subgrantee in the performance of this subgrant agreement, which did not result from research and development specifically included in the Subgrant's scope of work, Subgrantee hereby grants to Subgrantor a license as described under paragraph nineteen c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the subgrant agreement's scope of work, then Subgrantee agrees to assign to Subgrantor, without addition compensation, all its right, title and interest in and to such inventions and to assist Subgrantor in securing United States and foreign patents with respect thereto.

f). Third-Party Intellectual Property

Except as provided herein, Subgrantee agrees that its performance of this subgrant agreement shall not be dependent upon or include any Intellectual Property of Subgrantee or third party without first: (i) obtaining Subgrantor's prior written approval; and (ii) granting to or obtaining for Subgrantor's, without additional compensation, a license, as described in paragraph nineteen c), for any of Subgrantee's or third-party's Intellectual Property in existence prior to the effective date of this subgrant agreement. If such a license upon these terms is unattainable, and Subgrantor determines that the Intellectual Property should be included in or is required for Subgrantee's performance of this subgrant agreement, Subgrantee shall obtain a license under terms acceptable to Subgrantor.

g). Warranties

- (1). Subgrantee represents and warrants that:

- (a). It has secured and will secure all rights and licenses necessary for its performance of this subgrant agreement.
- (b). Neither Subgrantee's performance of this subgrant agreement, nor the exercise by either Party of the rights granted in this subgrant agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by Subgrantee.
- (c). Neither Subgrantee's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (d). It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors.
- (e). Of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
- (f). It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to Subgrantor in this subgrant agreement.

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 11 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

- (g). It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this subgrant agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h). It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Subgrantee's performance of this subgrant agreement.
- (2). SUBGRANTOR MAKES NO WARRANTY, THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS SUBGRANT AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

h). Intellectual Property Indemnity

- (1). Subgrantee shall indemnify, defend and hold harmless Subgrantor and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not Subgrantee is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Subgrantee pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of Subgrantor's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this subgrant agreement. Subgrantor reserves the right to participate in and/or control, at Subgrantee's expense, any such infringement action brought against Subgrantor.
- (2). Should any Intellectual Property licensed by the Subgrantee to Subgrantor under this subgrant agreement become the subject of an Intellectual Property infringement claim, Subgrantee will exercise its authority reasonably and in good faith to preserve Subgrantor's right to use the licensed Intellectual Property in accordance with this subgrant agreement at no expense to Subgrantor. Subgrantor shall have the right to monitor and appear through its own counsel (at Subgrantee's expense) in any such claim or action. In the defense or settlement of the claim, Subgrantee may obtain the right for Subgrantor to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, Subgrantor may be entitled to a refund of all monies paid under this subgrant agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3). Subgrantee agrees that damages alone would be inadequate to compensate Subgrantor for breach of any term of these Intellectual Property provisions of paragraph nineteen a) through nineteen i) by Subgrantee. Subgrantee acknowledges Subgrantor would suffer irreparable harm in the event of such breach and agrees Subgrantor shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

i). Survival

The provisions set forth herein shall survive any termination or expiration of this subgrant agreement or any project schedule.

20. Confidentiality Requirements

The State of California and the Subgrantee will exchange various kinds of information pursuant to this subgrant agreement. That information will include data, applications, program files, and information about specific clients receiving services. These data and information are confidential when they define an individual or an employing unit or when the disclosure is restricted or prohibited by any provision of law. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB
Page 12 of 14
SUBGRANT NO: K594766
MODIFICATION NO: NEW

Development Department, the California Department of Social Services, the California Department of Education, the California Department of Corrections, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges, the Department of Alcohol and Drug Programs, and individuals requesting program services.

The Subgrantor and Subgrantee agree that:

- a). Each party shall keep all confidential information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b). Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- c). The Subgrantee agrees that information obtained under this subgrant agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
 - i. Aggregate Summaries: All reports and/or publications developed by the Subgrantee based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
 - ii. Publication: Prior to publication, Subgrantee shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
 - iii. Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d). Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or to the public.
- e). The Subgrantee shall notify Subgrantor's Information Security Office of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (916) 654-6231. Information Security Incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets.

The Subgrantee shall cooperate with the Subgrantor in any investigations of security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied.

If the Subgrantee learns of a breach in the security of the system which contains confidential data obtained under this Subgrant, then the Subgrantee must provide notification to individuals pursuant to Civil Code section 1798.82.
- f). The Subgrantee shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Subgrant. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.
- g). At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- h). Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in section 1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.
- i). Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- j). Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB

Page 13 of 14

SUBGRANT NO: K594766

MODIFICATION NO: NEW

confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.

- k). If the Subgrantor or Subgrantee enters into an agreement with a third party to provide WIA services, the Subgrantor or Subgrantee agrees to include these data and security and confidentiality requirements in the agreement with that third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
- l). The Subgrantee may, in its operation of the One-Stops, permit a One-Stop Operator to enter into a subcontract to manage confidential information. This subcontract may allow an individual to register for resume-distribution services at the same time the individual enrolls in CalJOBS. Subgrantee shall ensure that all such subcontracts comply with the intellectual property requirements of paragraph 19 of this Subgrant, the confidentiality requirements of paragraph 20 of this Subgrant and any other terms of this Subgrant that may be applicable. In addition, the following requirements must be included in the subcontracts:
- (1) All client information submitted over the Internet to the subcontractor's databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Clients' social security numbers must be stored in a separate database within the subcontractor's network of servers, and protected by a firewall and a secondary database server firewall or AES data encryption. If a subcontractor receives client social security numbers or other confidential information in the course of business, for example a resume-distribution service that provides enrollment in CalJOBS, social security numbers must be destroyed within two days after the client registers for CalJOBS. If a subcontractor obtains confidential information as an agent of the subgrantee, the subcontract must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with 29 Code of Federal Regulations 97.42, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. The subgrantee should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later. (29 CFR sec. 97.42 (b)(2).)
 - (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using the subcontractor's services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in the subcontract.
 - (3) A One-Stop client must still be given the option to use the One-Stop's services, including CalJOBS, even if he or she chooses not to use any services of the subcontractor. This option shall be prominently, clearly, and immediately communicated to the client upon registration within the One-Stop or for CalJOBS, the subcontractor's resume-distribution services, or any other services subcontractor offers to the client or the One-Stop Operator.
 - (4) The subcontractor must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the clients seek and for any other services the subcontractor offers. The subcontractor shall not use a client's personal and/or demographic information without the client's prior permission. A link to the subcontractor's Privacy Policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
 - (5) When the Subgrantor modifies State automated systems such as the State CalJOBS System, it shall provide reasonable notice of such changes to the Subgrantee. The Subgrantee shall be responsible to communicate such changes to the One-Stop Operator(s) in the local area.
- m). Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

FOR THE SUBGRANTOR

Name: Cindy Hobart
Title: Section Manager
Address: P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001
Telephone: (916) 653-5955

WIA SUBGRANT AGREEMENT

Subgrantee: City of Long Beach dba PacGtwy

Exhibit BB

Page 14 of 14

SUBGRANT NO: K594766

MODIFICATION NO: NEW

Fax: (916) 654-9586

FOR THE SUBGRANTEE

Name: Erick Serrato

Title: Acting Executive Director

Telephone: 562.570.3701

Fax: 562.570.3704

21. Signatures

This subgrant agreement is of no force and effect until signed by both of the parties hereto.
Subgrantee will not commence performance prior to the beginning of this subgrant agreement.

Revised October 2007

EXHIBIT COVER SHEET

SUBGRANT NO: K594766
MODIFICATION NO: 00

EXHIBIT DD
Page 1 OF 1

SUBGRANTEE: City of Long Beach dba PacGtwy
FUNDING SOURCE: WIA TITLE I YOUTH FORMULA 301

TERM OF THESE FUNDS: 04/01/2014 TO: 06/30/2016

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

The purpose of this action is to initiate this Local Workforce Investment Area's (LWIA) new Program Year (PY) 2014-15 Workforce Investment Act (WIA) Title I subgrant agreement and to incorporate WIA Youth formula funding into Grant Code (GC) 301. The amount in GC 301 represents this LWIA's entire youth formula allocation for PY 2014-15. The term date for these funds is April 1, 2014 to June 30, 2016.

The LWIA will operate the WIA program in accordance with the approved Workforce Investment Plan on file in the Workforce Services Division of the Employment Development Department, P.O. Box 826882, MIC 50, Sacramento, CA 92480-0001.

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

WIA (3/2000)

EXHIBIT B

STATEMENT OF WORK **For** **Subject Matter Expertise**

- A. General Purpose: The general purpose of this Statement of Work is to outline process for determining future work engagement between vendor and Pacific Gateway.
- B. On as-needed basis, vendor will provide subject matter expertise as determined by Pacific Gateway, contingent upon project/program needs and funding availability.
- C. Pacific Gateway and vendor will generate a detailed scope of work specific to the funding and/or project.
- D. Vendor's proposal in response to Request for Proposals (RFP) #HR 14-056 will be incorporated as Exhibit B.1.
- E. Additional information, including invoicing, goals and deliverables, will be determined when appropriate.

