

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

AGREEMENT

**36415**

THIS AGREEMENT is made and entered, in duplicate, as of October 13, 2022 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 4, 2022, by and between WISS, JANNEY, ELSTNER ASSOCIATES, INC., an Illinois corporation ("Consultant"), with a place of business at 225 South Lake Avenue, Suite 500, Pasadena, California 91101, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with historic preservation consulting services on an as-needed basis ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, in an amount not to exceed Fifty Thousand Dollars (\$50,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the

1 necessary funds for such payment by the City in each fiscal year during the term of  
2 this Agreement. For the purposes of this Section, a fiscal year commences on  
3 October 1 of the year and continues through September 30 of the following year. In  
4 the event that the City Council of the City fails to appropriate the necessary funds  
5 for any fiscal year, then, and in that event, the Agreement will terminate at no  
6 additional cost or obligation to the City.

7 C. Consultant may select the time and place of performance for  
8 these services provided, however, that access to City documents, records, and the  
9 like, if needed by Consultant, shall be available only during City's normal business  
10 hours and provided that milestones for performance, if any, are met.

11 D. Consultant has requested to receive regular payments. City  
12 shall pay Consultant in due course of payments following receipt from Consultant  
13 and approval by City of invoices showing the services or task performed, the time  
14 expended (if billing is hourly), and the name of the Project. Consultant shall certify  
15 on the invoices that Consultant has performed the services in full conformance with  
16 this Agreement and is entitled to receive payment. Each invoice shall be  
17 accompanied by a progress report indicating the progress to date of services  
18 performed and covered by the invoice, including a brief statement of any Project  
19 problems and potential causes of delay in performance, and listing those services  
20 that are projected for performance by Consultant during the next invoice cycle.  
21 Where billing is done and payment is made on an hourly basis, the parties  
22 acknowledge that this arrangement is either customary practice for Consultant's  
23 profession, industry, or business, or is necessary to satisfy audit and legal  
24 requirements which may arise due to the fact that City is a municipality.

25 E. Consultant represents that Consultant has obtained all  
26 necessary information on conditions and circumstances that may affect its  
27 performance and has conducted site visits, if necessary.

28 F. CAUTION: Consultant shall not begin work until this

1 Agreement has been signed by both parties and until Consultant's evidence of  
2 insurance has been delivered to and approved by the City.

3 2. TERM. The term of this Agreement shall commence at midnight on  
4 October 4, 2022, and shall terminate at 11:59 p.m. on October 3, 2024, with the option to  
5 renew for three (3) additional one-year periods, at the discretion of the City Manager,  
6 unless sooner terminated as provided in this Agreement, or unless the services or the  
7 Project is completed sooner.

8 3. COORDINATION AND ORGANIZATION.

9 A. Consultant shall coordinate its performance with City's  
10 representative, if any, named in Exhibit "C", attached to this Agreement and  
11 incorporated by this reference. Consultant shall advise and inform City's  
12 representative of the work in progress on the Project in sufficient detail so as to  
13 assist City's representative in making presentations and in holding meetings on the  
14 Project. City shall furnish to Consultant information or materials, if any, described  
15 in Exhibit "D" attached to this Agreement and incorporated by this reference, and  
16 shall perform any other tasks described in the Exhibit.

17 B. The parties acknowledge that a substantial inducement to City  
18 for entering this Agreement was and is the reputation and skill of Consultant's key  
19 employee, named in Exhibit "E" attached to this Agreement and incorporated by this  
20 reference. City shall have the right to approve any person proposed by Consultant  
21 to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,  
23 Consultant is and shall act as an independent contractor and not an employee,  
24 representative, or agent of City. Consultant shall have control of Consultant's work and  
25 the manner in which it is performed. Consultant shall be free to contract for similar services  
26 to be performed for others during this Agreement provided, however, that Consultant acts  
27 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
28 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,

1 b) City will not secure workers' compensation or pay unemployment insurance to, for or on  
2 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the  
3 usual and customary rights, benefits or privileges of City employees. Consultant expressly  
4 warrants that neither Consultant nor any of Consultant's employees or agents shall  
5 represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this  
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
9 duration of this Agreement, from insurance companies that are admitted to write  
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
11 Company or from authorized non-admitted insurance companies subject to Section  
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
13 by A.M. Best Company the following insurance:

14 i. Commercial general liability insurance (equivalent in  
15 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
16 than One Million Dollars (\$1,000,000.00) per each occurrence and Two  
17 Million (\$2,000,000.00) general aggregate. This coverage shall include but  
18 not be limited to broad form contractual liability, cross liability, independent  
19 contractors liability, and products and completed operations liability. The  
20 City, its boards and commissions, and their officials, employees and agents  
21 shall be named as additional insureds by endorsement (on City's  
22 endorsement form or on an endorsement equivalent in scope to ISO form CG  
23 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04  
24 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain  
25 no special limitations on the scope of protection given to the City, its boards  
26 and commissions, and their officials, employees and agents. This policy shall  
27 be endorsed to state that the insurer waives its right of subrogation against  
28 City, its boards and commissions, and their officials, employees and agents.

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ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

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

C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify the City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to the City evidence of

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uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Consultant shall require that all subconsultants or contractors which Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant, shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's subconsultants and contractors, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, the City's Risk Manager or designee may require that Consultant, Consultant's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope, or types of coverages are not adequate.

H. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

6. 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

1 employees. Consultant shall not assign its rights or delegate its duties under this  
2 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
3 of City, except that Consultant may with the prior approval of the City Manager of City,  
4 assign any moneys due or to become due the Consultant under this Agreement. Any  
5 attempted assignment or delegation shall be void, and any assignee or delegate shall  
6 acquire no right or interest by reason of an attempted assignment or delegation.  
7 Furthermore, Consultant shall not subcontract any portion of its performance without the  
8 prior approval of the City Manager or designee, or substitute an approved subconsultant  
9 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
10 prevent Consultant from employing as many employees as Consultant deems necessary  
11 for performance of this Agreement.

12           7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
13 certifies that, at the time Consultant executes this Agreement and for its duration,  
14 Consultant does not and will not perform services for any other client which would create  
15 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
16 of that other client. Consultant further certifies that Consultant does not now have and shall  
17 not acquire any interest, direct or indirect, in the area covered by this Agreement or any  
18 other source of income, interest in real property or investment which would be affected in  
19 any manner or degree by the performance of Consultant's services hereunder. And,  
20 Consultant shall obtain similar certifications from Consultant's employees, subconsultants  
21 and contractors.

22           8. MATERIALS. Consultant shall furnish all labor and supervision,  
23 supplies, materials, tools, machinery, equipment, appliances, transportation, and services  
24 necessary to or used in the performance of Consultant's obligations under this Agreement,  
25 except as stated in Exhibit "D".

26           9. OWNERSHIP OF DATA. All materials, information and data  
27 prepared, developed, or assembled by Consultant or furnished to Consultant in connection  
28 with this Agreement, including but not limited to documents, estimates, calculations,

1 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
2 models, reports, summaries, drawings, designs, notes, plans, information, material, and  
3 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
4 in a format identified by City, and City shall have the unrestricted right to use and disclose  
5 the Data in any manner and for any purpose without payment of further compensation to  
6 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
7 Data shall not be made available to any person or entity for use without the prior approval  
8 of City. This warranty shall survive termination of this Agreement for five (5) years.

9           10. TERMINATION. Either party shall have the right to terminate this  
10 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
11 prior written notice to the other party. In the event of termination under this Section, City  
12 shall pay Consultant for services satisfactorily performed and costs incurred up to the  
13 effective date of termination for which Consultant has not been previously paid. The  
14 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective  
15 date of termination, Consultant shall deliver to City all Data developed or accumulated in  
16 the performance of this Agreement, whether in draft or final form, or in process. And,  
17 Consultant acknowledges and agrees that City's obligation to make final payment is  
18 conditioned on Consultant's delivery of the Data to the City.

19           11. CONFIDENTIALITY. Consultant shall keep the Data confidential and  
20 shall not disclose the Data or use the Data directly or indirectly other than in the course of  
21 performing its services, during the term of this Agreement and for five (5) years following  
22 expiration or termination of this Agreement. In addition, Consultant shall keep confidential  
23 all information, whether written, oral, or visual, obtained by any means whatsoever in the  
24 course of performing its services for the same period of time. Consultant shall not disclose  
25 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit  
26 of others except for the purpose of this Agreement.

27           12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
28 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates



1 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
2 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
3 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
4 disclosed pursuant to subpoena or court order.

5 13. ADDITIONAL COSTS AND REDESIGN.

6 A. Any costs incurred by the City due to Consultant's failure to  
7 meet the standards required by the scope of work or Consultant's failure to perform  
8 fully the tasks described in the scope of work which, in either case, causes the City  
9 to request that Consultant perform again all or part of the Scope of Work shall be at  
10 the sole cost of Consultant and City shall not pay any additional compensation to  
11 Consultant for its re-performance.

12 B. If the Project involves construction and the scope of work  
13 requires Consultant to prepare plans and specifications with an estimate of the cost  
14 of construction, then Consultant may be required to modify the plans and  
15 specifications, any construction documents relating to the plans and specifications,  
16 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
17 received by City exceeds by more than ten percent (10%) Consultant's estimate.  
18 This modification shall be submitted in a timely fashion to allow City to receive new  
19 bids within four (4) months after the date on which the original plans and  
20 specifications were submitted by Consultant.

21 14. AMENDMENT. This Agreement, including all Exhibits, shall not be  
22 amended, nor any provision or breach waived, except in writing signed by the parties which  
23 expressly refers to this Agreement.

24 15. LAW. This Agreement shall be governed by and construed pursuant  
25 to the laws of the State of California (except those provisions of California law pertaining  
26 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and  
27 regulations of and obtain all permits, licenses, and certificates required by all federal, state  
28 and local governmental authorities.

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16. PREVAILING WAGES.

A. Consultant agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City makes no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

B. In all bid specifications, contracts and subcontracts for any such Public Work, Consultant shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

17. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

18. INDEMNITY.

A. Consultant shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant's breach or failure to comply with any of its

1 obligations contained in this Agreement, or (2) negligent or willful acts, errors,  
2 omissions or misrepresentations committed by Consultant, its officers, employees,  
3 agents, subcontractors, or anyone under Consultant's control, in the performance  
4 of work or services under this Agreement (collectively "Claims" or individually  
5 "Claim").

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

15 C. If a court of competent jurisdiction determines that a Claim was  
16 caused by the sole negligence or willful misconduct of Indemnified Parties,  
17 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
18 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
19 percentage of willful misconduct attributed by the court to the Indemnified Parties.

20 D. To the extent this Agreement is a professional service  
21 agreement for work or services performed by a design professional (architect,  
22 landscape architect, professional engineer or professional land surveyor), the  
23 provisions of this Section regarding Consultant's duty to defend and indemnify shall  
24 be limited as provided in California Civil Code Section 2782.8, and shall apply only  
25 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or  
26 willful misconduct of the Consultant.

27 E. The provisions of this Section shall survive the expiration or  
28 termination of this Agreement.

1                   19.    AMBIGUITY. In the event of any conflict or ambiguity between this  
2 Agreement and any Exhibit, the provisions of this Agreement shall govern.

3                   20.    NONDISCRIMINATION.

4                   A.     In connection with performance of this Agreement and subject  
5 to applicable rules and regulations, Consultant shall not discriminate against any  
6 employee or applicant for employment because of race, religion, national origin,  
7 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
8 disability. Consultant shall ensure that applicants are employed, and that employees  
9 are treated during their employment, without regard to these bases. These actions  
10 shall include, but not be limited to, the following: employment, upgrading, demotion  
11 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay  
12 or other forms of compensation, and selection for training, including apprenticeship.

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

24                   21.    FORCE MAJEURE. If any party fails to perform its obligations  
25 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain  
26 labor or materials or reasonable substitutes for labor materials, governmental restrictions,  
27 governmental regulations, governmental controls, judicial orders, enemy or hostile  
28 governmental action, pandemic, civil commotion, fire or other casualty, or other causes

1 beyond the reasonable control of the party obligated to perform, then that party's  
2 performance will be excused for a period equal to the period of such cause for failure to  
3 perform.

4           22. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
5 accordance with the provisions of the Ordinance, this Agreement is subject to the  
6 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
7 Long Beach Municipal Code, as amended from time to time.

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

12                   "During the performance of a contract with the City of Long Beach, the  
13 Consultant will provide equal benefits to employees with spouses and its  
14 employees with domestic partners. Additional information about the City of  
15 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
16 Long Beach Business Services Division at 562-570-6200."

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

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

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

26           E. If the City determines that the Consultant has set up or used its  
27 contracting entity for the purpose of evading the intent of the EBO, the City may  
28 terminate the Agreement on behalf of the City. Violation of this provision may be

1 used as evidence against the Consultant in actions taken pursuant to the provisions  
2 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

3 23. NOTICES. Any notice or approval required by this Agreement shall  
4 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
5 postage prepaid, addressed to Consultant at the address first stated above, and to the City  
6 at 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a  
7 copy to the City Engineer at the same address. Notice of change of address shall be given  
8 in the same manner as stated for other notices. Notice shall be deemed given on the date  
9 deposited in the mail or on the date personal delivery is made, whichever occurs first.

10 24. COPYRIGHTS AND PATENT RIGHTS.

11 A. Consultant shall place the following copyright protection on all  
12 Data: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.

13 B. City reserves the exclusive right to seek and obtain a patent or  
14 copyright registration on any Data or other result arising from Consultant's  
15 performance of this Agreement. By executing this Agreement, Consultant assigns  
16 any ownership interest Consultant may have in the Data to the City.

17 C. Consultant warrants that the Data does not violate or infringe  
18 any patent, copyright, trade secret or other proprietary right of any other party.  
19 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials  
20 and employees harmless from any and all claims, demands, damages, loss, liability,  
21 causes of action, costs or expenses (including reasonable attorneys' fees) whether  
22 or not reduced to judgment, arising from any breach or alleged breach of this  
23 warranty.

24 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
25 that Consultant has not employed or retained any entity or person to solicit or obtain this  
26 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,  
27 commission, or other monies based on or from the award of this Agreement. If Consultant  
28 breaches this warranty, City shall have the right to terminate this Agreement immediately

1 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
2 due under this Agreement or otherwise recover the full amount of the fee, commission, or  
3 other monies.

4           26. WAIVER. The acceptance of any services or the payment of any  
5 money by City shall not operate as a waiver of any provision of this Agreement or of any  
6 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
7 Agreement shall not constitute a waiver of any other or subsequent breach of this  
8 Agreement.

9           27. CONTINUATION. Termination or expiration of this Agreement shall  
10 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled  
11 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Indemnity", and  
12 "Audit" prior to termination or expiration of this Agreement.

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

21           29. ADVERTISING. Consultant shall not use the name of City, its officials  
22 or employees in any advertising or solicitation for business or as a reference, without the  
23 prior approval of the City Manager or designee.

24           30. AUDIT. City shall have the right at all reasonable times during the  
25 term of this Agreement and for a period of five (5) years after termination or expiration of  
26 this Agreement to examine, audit, inspect, review, extract information from, and copy all  
27 books, records, accounts, and other documents of Consultant relating to this Agreement.

28           31. THIRD PARTY BENEFICIARY. This Agreement is not intended or

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

1 designed to or entered for the purpose of creating any benefit or right for any person or  
2 entity of any kind that is not a party to this Agreement.

3 IN WITNESS WHEREOF, the parties have caused this document to be duly  
4 executed with all formalities required by law as of the date first stated above.

WISS, JANNEY, ELSTNER ASSOCIATES,  
INC., an Illinois corporation

7 October 24, 2022

By William J. Nugent  
Name WILLIAM J. NUGENT  
Title PRESIDENT

9 October 24, 2022

By Thomas B. Brady  
Name THOMAS B. BRADY  
Title ASSISTANT SECRETARY



"Consultant"

CITY OF LONG BEACH, a municipal  
corporation

14 11-1, 2022

By Sandra J. Johnson  
City Manager

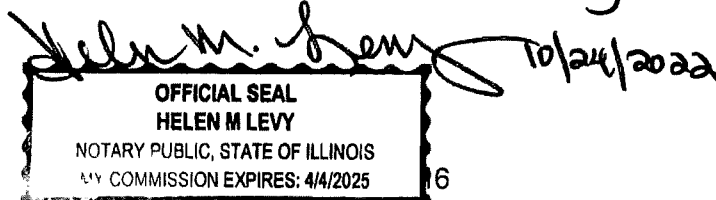
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

17 This Agreement is approved as to form on October 25, 2022.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

23 State of Illinois  
County of Cook  
This instrument was acknowledged  
before me on October 24, 2022  
By William J. Nugent, President of WJS Inc.  
Thomas B. Brady, Asst. Secretary WJS Inc.





# EXHIBIT "A"

## Scope of Work

# 1 The Opportunity

## 1.1 Project Summary

The City of Long Beach seeks to identify qualified consultants to assist the city with its historic preservation efforts on as-needed basis. Services may include technical, architectural, historical, and/or design guidance. Those projects may include researching, writing historic structure reports, multi-year preservation projects, technical support in project review, development of historic preservation programs, community engagement, and public presentations.

## 1.2 Background

The City of Long Beach (City) has a strong commitment to maintaining the rich heritage, cultural resources, and unique structures that reflect the diversity of the community and acknowledge its history. This commitment is fostered by the City's historic preservation initiatives and programs, such as the adaptive reuse guidelines, Mills Act Property Tax Abatement Program (Mills Act), Historic District Design Guidelines, and through community outreach and engagement activities.

The City's Department of Development Services (Department) assists property owners with the technical aspects of preservation, renovation, rehabilitation, and reuse of their historic sites. The Department also works with the community to promote an understanding and appreciation of the City's significant architectural and environmental history.

The City is seeking proposals from qualified consultants to provide historic preservation consulting services on an as-needed basis. The City intends to engage the services of one or more professional firms to provide technical, architectural, historical, and design guidance as related to preservation issues and projects within the City.

## 1.3 Goals

The qualified consultant(s) identified under this solicitation will provide high level professional historic preservation work in a timely manner in a diverse community. Assigned projects, while typically related to private property, will also include City projects that require consultants to coordinate with diverse stakeholders and multiple City departments.

The awarded consultant(s) will provide a broad range of historic preservation services on an as-needed basis that will facilitate the City's efforts preparing historic structure evaluations, restoration plans, maintenance plans, and multi-year projects such as context statements and historic resource surveys. Other projects may include consulting support that ensures



development project reviews comply with the Secretary of the Interior's (SOI) Standards and California Environmental Quality Act compliance for cultural resources (CEQA).

#### 1.4 Award Terms

This contract will be for a period of two years with the option to renew for three additional one-year periods. The total contract term will not exceed five years.

## 2 Scope of Work

### 2.1 Description of Services

The awarded consultant(s) will provide support services related to the review and administration of historic programs. These services include but are not limited to the following:

1. Provide as needed records searches, resource evaluations, CEQA reports and DPR 523 forms in relation to local, state, and federal historic register listing criteria.
2. Prepare historic evaluations of properties/CEQA reports.
3. Peer review staff determinations of Certificates of Appropriateness, focusing on conformity between proposed improvements and the Secretary of Interior's Standards and Guidelines for Preservation, Rehabilitation, Restoration, and Reconstruction.
4. Provide independent peer review of CEQA and historic property reports as prepared by consultants retained by property owners that are required for landmark designation, district management, or for current planning review purposes.
5. Assure compliance with Section 106 of the National Historic Preservation Act and its application to any HUD-funded activities as they go through the compliance process of the National Environmental Policy Act (NEPA).
6. Review existing policies and procedures and make recommendations for changes to policy.
7. Coordinate with City staff regarding the integration of planning processes and historic preservation issues.
8. Provide technical assistance to staff and property owners regarding property and building conditions, repairs, maintenance, and restoration.



9. Provide recommendations based on property inspections on an as-needed basis.
10. Support efforts to update the City's Historic Context Statement. The document is located at:  
<https://longbeach.gov/link/7a8da91c2a864c098795672b9f8091b5.aspx>
11. Expand the list of local architects and discussion of architectural practice within Long Beach's history.
12. Recognition of Midcentury Modern architecture and its historic context within the City.
13. Update the ethnographic section to provide more recent history in relation to the following:
  - a. Latino culture, migration, and historical contributions.
  - b. African American culture, and history, including but not limited to the prominent role Long Beach played in the development of Rap music.
  - c. Asian American and Pacific Islander (AAPI) history, culture, migration, and historical contributions
14. Create a new ethnographic section to document the recent history of Cambodian and other refugees settling within the City and the physical and cultural impact on the Anaheim Street and Cherry Avenue corridors.
15. Develop a context statement of earlier ethnic groups in the City's early growth and development period.
16. Appropriately recognizing the role and contribution of LGBT history within the City's culture and development.
17. Research historically and culturally significant properties that are not currently designated historic landmarks, including potentially significant sites, and properties identified in the City's draft Race and Suburbanization Historic Context Statement.
18. Update evaluations for designated landmark properties including statements of integrity and identification of character defining features.



19. Conduct focused surveys, including but not limited to:

- a. Citywide Midcentury Modern resources (this survey may be phased to first document commercial structures, followed by multifamily structures and later review single-family residences).
- b. Alamitos Beach and Franklin School communities (Land Use Element Implementation roughly bound by Alamitos Avenue, 7<sup>th</sup> Street, Cherry Avenue and Ocean Boulevard),
- c. 4th Street and Broadway commercial corridors (Alamitos Avenue to Ximeno Avenue)
- d. City-owned properties such as libraries, fire stations, park facilities and other public structures.
- e. Other potentially historically significant properties in the City.

20. Identify potential landmarks and/or historic districts to update the context statement to reflect Latino, African American, AAPI, LGBT, and Cambodian experiences.

21. Assist the City with objective evaluations of existing Landmark districts including mechanisms to increase compliance and restoration, re-surveying and updates to contributor/non-contributor lists, adjustments to district boundaries to protect additional resources and remove resources from outside the period of significance.

22. National and State Register Nominations.

- a. Evaluate the list of existing local landmarks for eligibility for state and/or federal listing, evaluate the potential for federal tax credits to incentivize rehabilitation of these resources.
- b. Research and evaluate properties pursuant to relevant criteria.
- c. Prepare national and state Register of Historic Places nominations.
- d. Peer review national and state Register of Historic Places nominations from third parties.



- e. Evaluate historic ships, maritime resources and provide recommendations based on the Secretary of Interior's Standards for Historic Vessel Preservation Projects which may include the Queen Mary.
  - f. Prepare and/or coordinate preparation of Historic American Building Survey (HABS)/ Historic American Engineering Record (HAER) documentation reports as needed.
  - g. Update the General Plan Historic Preservation Element to reflect these changes as well as new landmarks added since the last update.  
<https://longbeach.gov/link/9809b75beed248eda9865e5d7c72cf99.aspx>
23. Identify and communicate to staff relevant grant and funding opportunities to best position the City to maintain a robust historic preservation program.
24. Assist staff with preparing brochures, flyers, website content, or other communications content, such as social media postings, videos and photographs to support the City's preservation program and encourage proper care of historic resources by property owners.
25. Update or edit newly adopted Historic District Design Guideline documents as needed.  
<https://longbeach.gov/lbds/planning/preservation/districts/guidelines/>
26. Coordinate with staff to prepare process map flow charts for use by City staff and the public.
27. Assist the City in evaluating new and expanded opportunities to monetize historic resources through adaptive reuse, tourism, special events, and other creative mechanisms.
28. Assist the City in identifying available grant funding to support the Long Beach historic preservation program and properties.
29. Develop and conduct trainings for multiple audiences, including Staff and the Cultural Heritage Commission, on a variety of topics, including how to identify and evaluate non-traditional cultural assets, how to evaluate using the Secretary of the Interior Standards, and historic preservation topics.



30. Research and evaluate innovative community engagement tools for identifying historic assets, raising awareness about the value and importance of historic preservation, and for communicating about historic preservation regulatory processes such as obtaining a Certificate of Appropriateness.

31. Advise on tribal consultations.

32. Support adaptive reuse of historic structures with demonstrated historic architectural and engineering expertise and application of the state historic building code.

## 2.2 Performance Metrics & Contract Management

### 2.2.1 Performance Metrics

The table below highlights the targets that will be tracked and reviewed collaboratively with the awarded contractor during the contract. This list is an indication of the performance metrics of interest to the City, and is not exhaustive or final. As a part of a response to this RFP, Proposers may propose additional or alternative performance metrics to be tracked on a regular basis. The final set of performance metrics and frequency of collection will be negotiated by the successful Proposer and the City prior to the finalization of an agreement between parties, and may be adjusted over time as needed.

<b>METRIC</b>	<b>DESCRIPTION</b>	<b>TARGET</b>	<b>DATA SOURCE</b>
1. Completion of assigned projects and submission of work product in a timely manner.	All projects shall be completed within specified deadlines.	Consultant shall provide progress updates on a monthly schedule or as determined necessary based on project scope.	Scope of Work and Deliverables
2. All written work products should be easy to comprehend	The written work product shall be well organized, and thorough.	Work product shall be easy to reference, read and support the overall project with all appropriate reference documentation.	Scope of Work and Deliverables
3. All work product shall be	As applicable, all work product shall	Consultant teams meet federal	Consultant teams meet the



# EXHIBIT “B”

Rates or Charges





## City of Long Beach Request for Proposals No. DV-22-091

On-Call Historic Preservation Consulting Services - Cost Proposal

Long Beach, California



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### **COST PROPOSAL**

August 9, 2022

WJE No. 2022.5005

### **PREPARED FOR:**

City of Long Beach  
Department of Financial Management  
411 West Ocean Boulevard, 6th Floor  
Long Beach, California 90802

### **PREPARED BY:**

Wiss, Janney, Elstner Associates, Inc.  
225 South Lake Avenue, Suite 500  
Pasadena, California 91101  
626.696.4650 tel



## **City of Long Beach Request for Proposals No. DV-22-091**

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On-Call Historic Preservation Consulting Services - Cost Proposal

Long Beach, California

A handwritten signature in black ink, appearing to read 'J. Caldwell', written over a horizontal line.

Jeffrey A. Caldwell, P.E.

Principal and Unit Manager

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### **COST PROPOSAL**

August 9, 2022

WJE No. 2022.5005

### **PREPARED FOR:**

City of Long Beach  
Department of Financial Management  
411 West Ocean Boulevard, 6th Floor  
Long Beach, California 90802

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626.696.4650 tel



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## **SCOPE OF WORK**

WJE proposes to assist the City with its historic preservation efforts on an as-needed basis, including providing technical, architectural, historical and/or design guidance appropriate to specific project requirements.

As described in Method of Approach, Question 3, as revised in Addendum 1, and listed below, WJE has the capacity, relevant experience, and successful track record to provide the City of Long Beach with a full range of project management, architectural, and forensic engineering services and is hereby submitting qualifications and a cost proposal for these selected work scope types:

1. Historic Structure Report
2. Maintenance Manual

In addition to the above, to assist the City of Long Beach in the understanding and management of its historic building stock, we suggest that the on-call historic preservation services pool should include a consultant like WJE to provide another work scope type:

3. Architectural and Engineering Technical Expertise for Historic Structures

These services would be described in detail in a future proposal, on a per project basis, should the WJE team be selected for the current On-Call contract.

## **Project-Specific Tasks and Services**

In this proposal, WJE has provided qualifications to perform the following selected tasks and services from Item 2.1 Description of Services in the RFP, and related to the above-listed work scope types:

- Provide technical assistance to staff and property owners regarding property and building conditions, repairs, maintenance, and restoration.
- Provide recommendations based on property inspections on an as-needed basis.
- Update evaluation for designated landmark properties including statements of integrity and identification of character-defining features.
- Evaluate historic ships and maritime resources and provide recommendations based on the Secretary of the Interior's Standards for Historic Vessel Preservation Projects, which may include the *Queen Mary*.
- Prepare and/or coordinate preparation of Historic American Building Survey (HABS) / Historic American Engineering Record (HAER) documentation reports as needed.
- Support adaptive reuse of historic structures with demonstrated historic architectural and engineering expertise and application of the State Historic Building Code



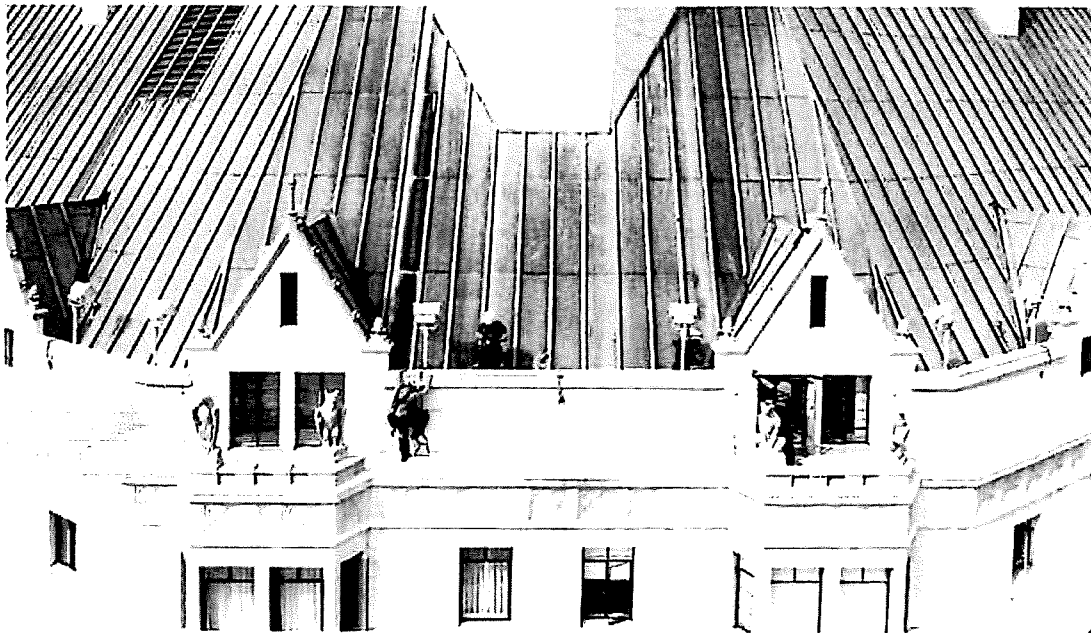
**COST PROPOSAL**

**Hourly Rate Schedule**

Table 1. Hourly Billing Rates

Professional Staff		Professional Support Staff	
Senior Principal	\$315.00	Senior Specialist	\$140.00
Principal	\$255.00	Specialist	\$125.00
Associate Principal	\$215.00	Senior Technician	\$105.00
Senior Associate	\$190.00	Technician II	\$95.00
Associate III	\$165.00	Technician I	\$80.00
Associate II	\$150.00		
Associate I	\$120.00		

Per the Request for Proposals, WJE will bill per the above Hourly Rate Schedule for staff hours and expenses actually accrued in producing the required services, up to a maximum fee to be established through negotiations. Reimbursable expenses will not include mark-ups. Mileage, office supplies, overhead expenses, or the use of computer equipment will not be billed to the City of Long Beach in connection with providing these services.



WJE's Difficult Access Team of engineers and architects perform a condition assessment of the roof at Villa Riviera in Long Beach, California.

# EXHIBIT “C”

City’s Representative:

Director of Development Services or Designee

# EXHIBIT "D"

Materials/Information Furnished: None

# EXHIBIT "E"

Consultant's Key Employee:

Jeffrey A. Caldwell, P.E.

[jcaldwell@wje.com](mailto:jcaldwell@wje.com)