

AGREEMENT

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THIS AGREEMENT is made and entered, as of October 5, 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 JOHNSON-FRANK & ASSOCIATES, INC., a California corporation ("Consultant"), with a place of business at 5150 E. Hunter Avenue, Anaheim, California 92807, 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 as-needed surveying services ("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 One Million Dollars (\$1,000,000), 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 necessary funds for such payment by the City in each fiscal year during the term of

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

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

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

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

27 F. CAUTION: Consultant shall not begin work until this
28 Agreement has been signed by both parties and until Consultant's evidence of

1 insurance has been delivered to and approved by the City.

2 2. TERM. The term of this Agreement shall commence at midnight on
3 December 1, 2022, and shall terminate at 11:59 p.m. on November 30, 2025, unless
4 sooner terminated as provided in this Agreement, or unless the services or the Project is
5 completed sooner. The term may be renewed for two (2) additional one-year periods, at
6 the discretion of the City Manager.

7 3. COORDINATION AND ORGANIZATION.

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

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

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

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

5 5. INSURANCE.

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

13 i. Commercial general liability insurance (equivalent in
14 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) naming the City of
15 Long Beach, its Boards, and their officials, employees and agents as
16 additional insureds on a form equivalent in coverage scope to ISO CG 20 10
17 04 13 from and against claims, demands, causes of action, expenses, costs,
18 or liability for injury to or death of persons, or damage to or loss of property
19 arising out activities performed by or on behalf of the Consultant in an amount
20 not less than One Million Dollars (\$1,000,000.00) per each occurrence and
21 Two Million (\$2,000,000.00) general aggregate. Such insurance shall not
22 exclude XCU (explosion, underground and collapse) perils, sudden and
23 accidental pollution and cleanup liability, or mobile equipment. This coverage
24 shall include but not be limited to broad form contractual liability, cross
25 liability, independent contractors liability, and products and completed
26 operations liability. This insurance shall contain no special limitations on the
27 scope of protection given to the City, its boards and commissions, and their
28 officials, employees and agents. This policy shall be endorsed to state that

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the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

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 One Million Dollars (\$1,000,000.00) 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. "Claims-made policies are not acceptable unless the City Risk Manger determines that "occurrence" policies are not available in the Market for the

1 risk being insured. If a "claims made" policy is accepted, it must provide for an
2 extended reporting period of not less than three (3) years. Such insurance as
3 required herein shall not be deemed to limit Consultant's liability relating to
4 performance under this Agreement. City reserves the right to require complete
5 certified copies of all said policies at any time. .

6 E. Consultant shall require that all subconsultants or contractors
7 which Consultant uses in the performance of these services maintain insurance in
8 compliance with this Section unless otherwise agreed in writing by City's Risk
9 Manager or designee. Any subconsultant which Consultant may use in the
10 performance of this Agreement shall be required to indemnify the City to the same
11 extent as the Consultant and to maintain insurance in compliance with the provisions
12 of this section.

13 F. Prior to the start of performance, Consultant shall deliver to City
14 certificates of insurance and the endorsements for approval as to sufficiency and
15 form. The certificates and endorsement for each insurance policy shall contain the
16 original signature of a person authorized by that insurer to bind coverage on its
17 behalf. In addition, Consultant, shall, within thirty (30) days prior to expiration of the
18 insurance, furnish to City certificates of insurance and endorsements evidencing
19 renewal of the insurance. City reserves the right to require complete certified copies
20 of all policies of Consultant and Consultant's subconsultants and contractors, at any
21 time. Consultant shall make available to City's Risk Manager or designee all books,
22 records and other information relating to this insurance, during normal business
23 hours.

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

1 opinion, the amount, scope, or types of coverages are not adequate.

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

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

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

1 and contractors.

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

6 9. OWNERSHIP OF DATA. All materials, information and data
7 prepared, developed, or assembled by Consultant or furnished to Consultant in connection
8 with this Agreement, including but not limited to documents, estimates, calculations,
9 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
10 models, reports, summaries, drawings, designs, notes, plans, information, material, and
11 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
12 in a format identified by City, and City shall have the unrestricted right to use and disclose
13 the Data in any manner and for any purpose without payment of further compensation to
14 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
15 Data shall not be made available to any person or entity for use without the prior approval
16 of City. This warranty shall survive termination of this Agreement for five (5) years.

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

27 11. CONFIDENTIALITY. Consultant shall keep the Data confidential and
28 shall not disclose the Data or use the Data directly or indirectly other than in the course of

1 performing its services, during the term of this Agreement and for five (5) years following
2 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
3 all information, whether written, oral, or visual, obtained by any means whatsoever in the
4 course of performing its services for the same period of time. Consultant shall not disclose
5 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
6 of others except for the purpose of this Agreement.

7 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
8 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
9 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
10 without breach of this Agreement by Consultant; or (c) a third party who has a right to
11 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
12 disclosed pursuant to subpoena or court order.

13 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

4 15. WORK DAY. Consultant shall comply with Sections 1810 through
5 1815 of the California Labor Code regarding hours of work. Consultant shall forfeit, as a
6 penalty to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by
7 Consultant or any subcontractor for each calendar day such worker is required or permitted
8 to work more than eight (8) hours unless that worker receives compensation in accordance
9 with Section 1815.

10 16. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE.
11 Consultant is advised that this work constitutes a public work of improvement subject to
12 California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant
13 to Labor Code Section 1771.1, Consultant or subcontractors shall not be qualified to bid
14 on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public
15 contract Code, or engage in the performance of any contract for public work, as defined in
16 the California Labor Code, unless currently registered and qualified to perform public work
17 pursuant to Section 1725.5. The Agreement (or associated subcontracts) shall not be
18 entered into without proof of the Consultant's (or subcontractor's) current registration to
19 perform public work pursuant to Section 1725.5. All work conducted in support of this
20 public work of improvement is subject to compliance monitoring and enforcement by the
21 Department of Industrial Relations.

22 17. PREVAILING WAGE RATES. This project is a public work under
23 Labor Code § 1720 et seq. Pursuant to Division 2, Part 7, Chapter 1 of the Labor Code of
24 the State of California, the Director of Public Works of the City by and on behalf of the City
25 Council has obtained from the Director of the Department of Industrial Relations of the
26 State of California the general prevailing rate of per diem wages, and the general prevailing
27 rate of holiday and overtime work in the locality in which the public work is to be performed
28 for each craft, classification or type of workers needed to perform the Work. Copies of

1 prevailing rate of per diem wages are on file in the office of the City Engineer, 5th floor, City
2 Hall, 411 West Ocean Boulevard, Long Beach, California 90802, and shall be made
3 available upon request. Copies may also be obtained on the California Department of
4 Industrial Relations website <http://www.dir.ca.gov/dlsr>. This project will be subject the
5 **2021-2 prevailing wage** rate, as determined by the Director of the Department of Industrial
6 Relations for the State of California. The Consultant and its subcontractors are directed to
7 pay not less than the general rate of per diem wages for each craft, classification, or type
8 of worker needed to execute the contract. Consultant is required to post a copy of the
9 determination of the director of the prevailing rate of per diem wages at each job site.
10 Consultant is required to pay at least the California minimum wage for the basic hourly rate
11 in all cases where the published prevailing wage rate is below the California minimum
12 wage. Any and all employer payments required by the prevailing wage determinations must
13 also be paid. If the California minimum wage is increased in the future to an amount above
14 that shown in the prevailing wage determination, the basic hourly rate in that determination
15 automatically increases to the new minimum wage. Pursuant to Section 1775, Consultant
16 shall forfeit, as a penalty to the City, up to Two Hundred Dollars (\$200) for each laborer,
17 worker or mechanic employed for each calendar day, or portion thereof, that such laborer,
18 worker or mechanic is paid less than the prevailing wage rates for any work done by
19 Consultant, or any subcontractor, under this Contract. The difference between the
20 prevailing wage rates and the amount paid to each worker for each calendar day or portion
21 thereof for which each worker was paid less than the prevailing wage rate shall be paid to
22 each worker by the Consultant or subcontractor.

23 18. CERTIFIED PAYROLL RECORDS.

24 A. Pursuant to the provisions of Labor Code Section 1776,
25 Consultant shall keep and shall cause each subcontractor performing any portion of
26 the work under this Contract to keep an accurate payroll record, showing the name,
27 address, social security number, work classification, straight time and overtime
28 hours worked each day and week, and the actual per diem wages paid to each

1 journeyman, apprentice, worker, or other employee employed by Consultant or
2 subcontractor in connection with the work. Such payroll records for Consultant and
3 all subcontractors shall be certified and shall be available for inspection at all
4 reasonable hours at the principal office of Consultant pursuant to the provisions of
5 Section 1776 of the Labor Code. Consultant's failure to furnish such records to City
6 or City's authorized Labor Compliance representative in the manner provided herein
7 for notices shall entitle City to withhold the penalty prescribed by law from progress
8 payments due to Consultant.

9 B. Consultant and every subcontractor and supplier shall be
10 required to submit certified payrolls and labor compliance documentation
11 electronically at the discretion of and the manner specified by the City of Long
12 Beach. Electronic submittal will be a web-based system, accessed on the World
13 Wide Web by a web browser. Each contractor and subcontractor will be given a
14 Log On identification and password to access the City of Long Beach reporting
15 system. The foregoing is in addition to, and not in lieu of, any other requirements
16 or obligations established and imposed by any department of the City with regard to
17 submission and retention of certified payroll records for Consultant and
18 subcontractors.

19 C. Certified payroll records for Consultant and all subcontractors
20 shall be maintained during the course of the work and shall be kept by Consultant
21 for up to three (3) years after completion of the work.

22 D. The foregoing is in addition to, and not in lieu of, any other
23 requirements or obligations established and imposed by any department of the City
24 with regard to submission and retention of certified payroll records for Consultant
25 and subcontractors.

26 19. APPRENTICESHIP EMPLOYMENT. The Consultant shall comply
27 with Section 1777.5 of the Labor Code concerning the employment of apprentices by the
28 Consultant or any subcontractor under the Consultant and, by executing the Contract, the

1 Consultant stipulates that it shall so comply. Consultant employing apprentices or trainees
2 under approved programs shall maintain written evidence of the registration of
3 apprenticeship programs and certification of trainee programs, the registration of the
4 apprentices and trainees, and the ratios and wage rates prescribed in the applicable
5 programs.

6 20. PENALTIES. Consultant and subcontractors are subject to penalties,
7 including, but not limited to, under Labor Code §§ 1775, 1776, 1777.7 and 1813, for failure
8 to comply with Sections 13.28 through 13.31 and/or Labor Code § 1720 et seq.

9 21. PROJECT LABOR AGREEMENT (PLA).

10 A. This Agreement is covered by a Citywide Project Labor
11 Agreement (PLA) entered into by the City of Long Beach with the Los
12 Angeles/Orange Counties Building and Construction Trades Council and the
13 signatory Craft Unions. The PLA establishes the labor relations Policies and
14 Procedures for the City, the Consultant and subcontractors awarded contracts for
15 the Work and for the craft persons employed by the Consultant or subcontractor
16 while engaged in the Work.

17 B. The work covered by this Agreement shall be limited to any and
18 all demolition, construction and rehabilitation work pursuant to prime multi-trade and
19 specialty contracts and all subcontracts, of whatever tier, entered into by the City
20 that exceed \$750,000 for non-street/right of way projects and \$1,000,000 for
21 street/right of way projects. The goal of the PLA is to provide that the Work bring
22 full employment and economic benefit to the City and its residents. With the PLA,
23 the parties have established a framework for fair wages, hours and working
24 conditions through which these goals may be achieved, and which will permit the
25 utilization of the most modern, efficient and effective procedures for construction,
26 assure a sufficient supply of skilled craft persons, and reduce or eliminate the
27 causes of disruptions or interference with the Work.

28 C. The PLA contains a local hiring goal of forty percent (40%),

1 calculated based on total hours worked. The local hire provision requires best efforts
2 to utilize qualified workers residing in first tier zip codes (which include all of the City
3 of Long Beach), then in second tier zip codes (which reflect the Gateway Cities),
4 and finally in Los Angeles and Orange Counties. In addition, there is a provision with
5 a goal of 10% to hire Transitional Workers and Veterans. Where Project Work is
6 funded in full or in part by State of California Tideland funds, the term Local
7 Resident, as used herein, shall mean an individual whose primary place residence
8 is within the Counties of Los Angeles or Orange. The City will utilize
9 a PLA Administrator who will work with the contractors, residents, Long Beach City
10 College, Pacific Gateway, and the Trades to oversee the provisions of
11 the Agreement.

12 D. If applicable, the Consultant is required to hire a "Jobs
13 Coordinator" to provide additional outreach efforts connecting Long Beach residents
14 to job opportunities. The term Jobs Coordinator means an independent third-party
15 individual, entity, or employee with whom the prime contractor enters into a contract
16 or employs to facilitate implementation of the targeted hiring requirements of
17 the PLA

18 E. Consultant will cooperate with all efforts of the City,
19 the PLA Administrator, the Jobs Coordinator (if applicable), and other organizations
20 retained by the City to encourage and assist in the participation of local residents
21 and local small businesses in the Work.

22 F. Consultant is required to sign a Letter of Assent to acknowledge
23 and agree to comply with all provisions of the PLA.

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

27 23. LAW. All work performed in connection with this Agreement shall be
28 performed in compliance with all applicable laws, ordinances, rules and regulations of

1 federal, state, county or municipal governments or agencies (including, without limitation,
2 all applicable federal and state labor and prevailing wage standards, including the
3 prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code), and (b)
4 all directions, rules and regulations of any fire marshal, health officer, building inspector, or
5 other officer of every governmental agency now having or hereafter acquiring jurisdiction.

6 24. INDEMNITY.

7 A. Consultant shall indemnify, protect and hold harmless City, its
8 Boards, Commissions, and their officials, employees and agents ("Indemnified
9 Parties"), from and against any and all liability, claims, demands, damage, loss,
10 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
11 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
12 in connection with (1) Consultant's breach or failure to comply with any of its
13 obligations contained in this Agreement, or (2) negligent or willful acts, errors,
14 omissions or misrepresentations committed by Consultant, its officers, employees,
15 agents, subcontractors, or anyone under Consultant's control, in the performance
16 of work or services under this Agreement (collectively "Claims" or individually
17 "Claim").

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

27 C. If a court of competent jurisdiction determines that a Claim was
28 caused by the sole negligence or willful misconduct of Indemnified Parties,

1 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
2 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
3 percentage of willful misconduct attributed by the court to the Indemnified Parties.

4 D. If the Consultant elects to use subcontractors, Consultant
5 agrees to require its subcontractors to indemnify Indemnified Parties, and to provide
6 insurance coverage to the same extent as the Consultant.

7 E. To the extent this Agreement is a professional service
8 agreement for work or services performed by a design professional (architect,
9 landscape architect, professional engineer or professional land surveyor), the
10 provisions of this Section regarding Consultant's duty to defend and indemnify shall
11 be limited as provided in California Civil Code Section 2782.8, and shall apply only
12 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or
13 willful misconduct of the Consultant.

14 F. The provisions of this Section shall survive the expiration or
15 termination of this Agreement.

16 25. AMBIGUITY. In the event of any conflict or ambiguity between this
17 Agreement and any Exhibit, the provisions of this Agreement shall govern.

18 26. NONDISCRIMINATION.

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

28 B. It is the policy of City to encourage the participation of

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

11 27. FORCE MAJEURE. If any party fails to perform its obligations
12 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
13 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
14 governmental regulations, governmental controls, judicial orders, enemy or hostile
15 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
16 beyond the reasonable control of the party obligated to perform, then that party's
17 performance will be excused for a period equal to the period of such cause for failure to
18 perform.

19 28. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
20 accordance with the provisions of the Ordinance, this Agreement is subject to the
21 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
22 Long Beach Municipal Code, as amended 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 place
26 of business available to employees and applicants for employment:

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

1 employees with domestic partners. Additional information about the City of
2 Long Beach's Equal Benefits Ordinance may be obtained from the City of
3 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 or
8 to become due under the Agreement may be retained by the City. The City may
9 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 its
14 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 provisions
17 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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

25 30. COPYRIGHTS AND PATENT RIGHTS.

26 A. Consultant shall place the following copyright protection on all
27 Data: © City of Long Beach, California ____, inserting the appropriate year.

28 B. City reserves the exclusive right to seek and obtain a patent or

1 copyright registration on any Data or other result arising from Consultant's
2 performance of this Agreement. By executing this Agreement, Consultant assigns
3 any ownership interest Consultant may have in the Data to the City.

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

11 31. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
12 that Consultant has not employed or retained any entity or person to solicit or obtain this
13 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
14 commission, or other monies based on or from the award of this Agreement. If Consultant
15 breaches this warranty, City shall have the right to terminate this Agreement immediately
16 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
17 due under this Agreement or otherwise recover the full amount of the fee, commission, or
18 other monies.

19 32. WAIVER. The acceptance of any services or the payment of any
20 money by City shall not operate as a waiver of any provision of this Agreement or of any
21 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
22 Agreement shall not constitute a waiver of any other or subsequent breach of this
23 Agreement.

24 33. CONTINUATION. Termination or expiration of this Agreement shall
25 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled
26 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Certified Payroll
27 Records", "Indemnity", and "Audit" prior to termination or expiration of this Agreement.

28 34. TAX REPORTING. As required by federal and state law, City is

1 obligated to and will report the payment of compensation to Consultant on Form 1099-
2 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
3 resulting from payments under this Agreement. Consultant shall submit Consultant's
4 Employer Identification Number (EIN), or Consultant's Social Security Number if
5 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
6 Financial Management. Consultant acknowledges and agrees that City has no obligation
7 to pay Consultant until Consultant provides one of these numbers.

8 35. ADVERTISING. Consultant shall not use the name of City, its officials
9 or employees in any advertising or solicitation for business or as a reference, without the
10 prior approval of the City Manager or designee.

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

15 37. THIRD PARTY BENEFICIARY. This Agreement is not intended or
16 designed to or entered for the purpose of creating any benefit or right for any person or
17 entity of any kind that is not a party to this Agreement.

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

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

JOHNSON-FRANK & ASSOCIATES, INC.,
a California corporation

OCTOBER 27, 2022

By [Signature]
Name ALAN D. FRANK
Title PRESIDENT

OCTOBER 27, 2022

By [Signature]
Name ROGER A. FRANK
Title VICE PRESIDENT

"Consultant"

CITY OF LONG BEACH, a municipal corporation

December 12, 2022

By [Signature]
City Manager

"City"

This Agreement is approved as to form on NOVEMBER 10, 2022.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Exhibit A - Scope of Work

SCOPE OF WORK PW22-012

The City of Long Beach requires professional services in the following type of work, but not limited to preliminary design surveys of streets, construction staking, and subdivision map checking.

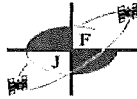
Consultant will be required to directly assist the City's Staff during peak activity times. Type of work will include, but not be limited to, those mentioned above.

Survey support services will likely include, but not be limited to the following:

- Preliminary design surveys of the street.
- Provide construction staking/ as built.
- Calculation of earthwork quantities.
- Monument preservation.
- Subdivision map checking and construction plan checking
- Preparation of easements, dedications, and leases.
- Establishing and maintaining survey control points and benchmarks.
- Attend project meetings and other meetings as requested by the City. At a minimum, the consultant will provide:
 - Qualified survey personnel, surveying instruments, equipment, and materials as needed for the proper performance of the surveys required.
 - Provide preliminary design surveys of the street.
 - Perform subdivision map checking and construction plan checking.
 - Perform legal easements/ vacation preparation.
 - Perform monument preservation.
 - Maintain complete and accurate survey notes and records of all survey work performed for review by the city upon request.

These services will supplement the work of the City's Survey Section. All survey services from the firm shall be performed by or under the direct supervision of a fully qualified California Professional Land Surveyor. Survey plots and calculations will be included in reports to regulatory agencies, including survey CAD Files.

Exhibit B - Rate Sheet



Johnson-Frank & Associates, Inc. (SBE)

On-Call Land Surveying Services

The City of Long Beach

Schedule of Hourly Rates for Services Performed by our Company for the City of Long Beach As Needed Land Surveying for Public Works

June 2022 to July 2025

Licensed Surveyor / Survey Manager	\$220.00
Senior Technician	\$165.00
Technician/CAD/GIS Operator	\$155.00
Three Person Survey Party w/equipment	\$440.00
Two Person Survey Party w/equipment	\$330.00
One Person Survey Party w/equipment	\$210.00
Party Chief w/o equipment (supplemental staff)	\$180.00
Chainman w/o equipment (supplemental staff)	\$160.00
City Staff Technician (supplemental staff)	\$140.00
Clerical/Delivery	Included in Overhead
Sub-consultants and Reimbursable Items	Cost
GNSS Equipment (1 unit per person included in above crew rates)	\$100/unit/day

½ hour travel time, one way. No Mileage fee.

Authorized overtime shall be charged at 1.35 times the regular rate except for Sundays and/or holidays. Rates for Sunday shall be 1.75 times the regular rate and for holidays it shall be 2.0 times the regular rates.

Daily overtime billing for field survey work during Monday through Friday does not commence until 8 hours of on-site work has been completed. (Travel time is not charged at overtime rates.)

Rates may only be changed by mutual consent.

Exhibit C - City's Representative

Keith Hoey, Assistant City Engineer

Keith.Hoey@LongBeach.Gov

562/570-6586

Exhibit D - City Provided Services
None

Exhibit E - Consultant Representative

Alan Frank , PLS, President
alanfrank@johnson-frank.com
714/777-8877