

AGREEMENT

**36502**

THIS AGREEMENT is made and entered, as of November 16, 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 November 15, 2022, by and between AKM CONSULTING ENGINEERS, a California corporation ("Consultant"), with a place of business at 553 Wald, Irvine, California 92618, 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 engineering consulting design services for the Pump "Station Recovery Mitigation projects ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures using a Request for Proposals ("RFP"), attached hereto as Exhibit "A-1", and incorporated by this reference, and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and; 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 Eight Hundred Thirty-Four Thousand Nine Hundred Fifty-Four Dollars (\$834,954), at the rates or charges shown in Exhibit "B".

1                   B.     The City's obligation to pay the sum stated above for any one  
2 fiscal year shall be contingent upon the City Council of the City appropriating the  
3 necessary funds for such payment by the City in each fiscal year during the term of  
4 this Agreement. For the purposes of this Section, a fiscal year commences on  
5 October 1 of the year and continues through September 30 of the following year. In  
6 the event that the City Council of the City fails to appropriate the necessary funds  
7 for any fiscal year, then, and in that event, the Agreement will terminate at no  
8 additional cost or obligation to the City.

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

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

27                  E.     Consultant represents that Consultant has obtained all  
28 necessary information on conditions and circumstances that may affect its

1 performance and has conducted site visits, if necessary.

2 F. CAUTION: Consultant shall not begin work until this  
3 Agreement has been signed by both parties and until Consultant's evidence of  
4 insurance has been delivered to and approved by the City.

5 2. TERM. The term of this Agreement shall commence at midnight on  
6 January 1, 2023 and shall terminate at 11:59 p.m. on October 1, 2023, unless sooner  
7 terminated as provided in this Agreement, or unless the services or the Project is  
8 completed sooner.

9 3. COORDINATION AND ORGANIZATION.

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

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

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

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

7                   5.     INSURANCE.

8                   A.     As a condition precedent to the effectiveness of this  
9 Agreement, Consultant shall procure and maintain at Consultant's expense for the  
10 duration of this Agreement from an Insurance company that is admitted to write  
11 insurance in the State of California or that has a rating of or equivalent to an A:VIII  
12 by A.M. Best and Company the following Insurance:

13                   i.     Commercial general liability Insurance equivalent in  
14 coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach and  
15 its Boards, departments, officials, employees, and agents as additional  
16 insureds on a form equivalent in coverage scope to ISO CG 20 10 11 85 from  
17 and against claims, demands, causes of action, expenses, costs, or liability  
18 for injury to or death of persons, or damage to or loss of property arising out  
19 of work or activities performed by or on behalf of the Consultant in an amount  
20 not less than One Million Dollars (US \$1,000,000) per occurrence and Two  
21 Million Dollars (US \$2,000,000) in general aggregate. Such insurance shall  
22 not exclude XCU (explosion, underground, and collapse) perils, sudden and  
23 accidental pollution and cleanup liability, or mobile equipment.

24                   ii.    Workers' compensation coverage as required by the  
25 Labor Code of the State of California and Employer's liability Insurance with  
26 minimum limits of One Million Dollars (US \$1,000,000) per accident or  
27 occupational illness. The policy shall be endorsed with a waiver of the  
28 Consultant's and its insurer's right of subrogation against the City of Long

1 Beach, and its Boards, departments, officials, employees, and agents.

2 iii. Commercial automobile liability Insurance equivalent in  
3 coverage scope to ISO CA 00 01 06 92 in an amount not less than One  
4 Million Dollars (US \$1,000,000) combined single limit (CSL) covering Symbol  
5 1 ("any auto").

6 iv. Professional liability or errors and omissions liability  
7 Insurance in an amount not less than One Million Dollars (\$1,000,000) per  
8 claim covering the services provided pursuant to this Agreement.

9 v. Cyberspace/online liability in an amount not less than  
10 One Million Dollars (\$1,000,000) per claim covering the work provided  
11 pursuant to this Agreement.

12 vi. Excess liability Insurance on a following form basis  
13 Insurance in excess of the coverage provided by (i), (iv) and (v), including  
14 additional insured coverage for (i) only, in an amount not less than Four  
15 Million Dollars (\$4,000,000) per claim and in aggregate.

16 B. Any self-insurance program or self-insurance retention must be  
17 approved separately in writing by City and shall protect City of Long Beach and its  
18 Boards, departments, officials, employees, and agents in the same manner and to  
19 the same extent as they would have been protected had the policy or policies not  
20 contained retention provisions. Each insurance policy shall be endorsed to state that  
21 coverage shall not be suspended, voided, or canceled by either party except after  
22 twenty (20) days prior written notice to City, and shall be primary and not contributing  
23 to any other insurance or self-insurance maintained by City.

24 C. Any subcontractors which Consultant may use in the  
25 performance of this Agreement shall be required to indemnify the City to the same  
26 extent as the Consultant and to maintain Insurance in compliance with the provisions  
27 of this section.

28 D. Consultant shall deliver to City certificates of Insurance and

1 original endorsements for approval as to sufficiency and form prior to the start of  
2 performance hereunder. The certificates and endorsements for each insurance  
3 policy shall contain the original signature of a person authorized by that insurer to  
4 bind coverage on its behalf. "Claims-made" policies are not acceptable unless City  
5 Risk Manager determines that "Occurrence" policies are not available in the market  
6 for the risk being insured. In a "Claims-made" policy is accepted, it must provide for  
7 an extended reporting period of not less than three (3) years. Such insurance as  
8 required herein shall not be deemed to limit Consultant's liability relating to  
9 performance under this Agreement. City reserves the right to require complete  
10 certified copies of all said policies at any time. Any modification or waiver of the  
11 insurance requirements herein shall be made only with the approval of City Risk  
12 Manager. The procuring of insurance shall not be construed as a limitation on  
13 liability or as full performance of the indemnification provisions of this Agreement.

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

1           7.     CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
2 certifies that, at the time Consultant executes this Agreement and for its duration,  
3 Consultant does not and will not perform services for any other client which would create  
4 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
5 of that other client. Consultant further certifies that Consultant does not now have and shall  
6 not acquire any interest, direct or indirect, in the area covered by this Agreement or any  
7 other source of income, interest in real property or investment which would be affected in  
8 any manner or degree by the performance of Consultant's services hereunder. And,  
9 Consultant shall obtain similar certifications from Consultant's employees, subconsultants  
10 and contractors.

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

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

26           10.    TERMINATION. Either party shall have the right to terminate this  
27 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
28 prior written notice to the other party. In the event of termination under this Section, City

1 shall pay Consultant for services satisfactorily performed and costs incurred up to the  
2 effective date of termination for which Consultant has not been previously paid. The  
3 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective  
4 date of termination, Consultant shall deliver to City all Data developed or accumulated in  
5 the performance of this Agreement, whether in draft or final form, or in process. And,  
6 Consultant acknowledges and agrees that City's obligation to make final payment is  
7 conditioned on Consultant's delivery of the Data to the City.

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

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

22 13. ADDITIONAL COSTS AND REDESIGN.

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



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

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

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

18 16. WORK DAY. Consultant shall comply with Sections 1810 through  
19 1815 of the California Labor Code regarding hours of work. Consultant shall forfeit, as a  
20 penalty to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by  
21 Consultant or any subcontractor for each calendar day such worker is required or permitted  
22 to work more than eight (8) hours unless that worker receives compensation in accordance  
23 with Section 1815.

24 17. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE.  
25 Consultant is advised that this work constitutes a public work of improvement subject to  
26 California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant  
27 to Labor Code Section 1771.1. Consultant or subcontractors shall not be qualified to bid  
28 on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public

1 contract Code, or engage in the performance of any contract for public work, as defined in  
2 the California Labor Code, unless currently registered and qualified to perform public work  
3 pursuant to Section 1725.5. Contract (or associated subcontracts) shall not be entered into  
4 without proof of the Consultant's (or subcontractor's) current registration to perform public  
5 work pursuant to Section 1725.5. All work conducted in support of this public work of  
6 improvement is subject to compliance monitoring and enforcement by the Department of  
7 Industrial Relations. Consultant will abide by all applicable apprenticeship requirements in  
8 the California Labor Code Section 1777.5 and will be responsible for subcontractor  
9 apprenticeship compliance to the same.

10 18. PREVAILING WAGE RATES. Consultant is directed to pay the  
11 general rate of per diem wages for each craft, classification, or type of worker needed to  
12 execute the contract (prevailing wage rates). Copies of the current prevailing rate of per  
13 diem wages are on file at its principle office (Labor Compliance Division, 411 W. Ocean  
14 Boulevard, 6th Floor, Long Beach, California, 90802), and shall be made available to any  
15 interested party upon request. Copies may also be obtained on the California Department  
16 of Industrial Relations website <http://www.dir.ca.gov/dlsr>. This project will be subject to the  
17 2022-1 prevailing wage rate, as determined by the Director of the Department of Industrial  
18 Relations for the State of California. Consultant is required to post a copy of the  
19 determination of the director of the prevailing rate of per diem wages at each job site.  
20 Pursuant to Section 1775, Consultant shall forfeit, as a penalty to the City, up to Two  
21 Hundred Dollars (\$200) for each laborer, worker or mechanic employed for each calendar  
22 day, or portion thereof, that such laborer, worker or mechanic is paid less than the  
23 prevailing wage rates for any work done by Consultant, or any subcontractor, under this  
24 Contract. The difference between the prevailing wage rates and the amount paid to each  
25 worker for each calendar day or portion thereof for which each worker was paid less than  
26 the prevailing wage rate shall be paid to each worker by the Consultant or subcontractor.

27 Consultant is required to pay at least the California minimum wage for the  
28 basic hourly rate in all cases where the published prevailing wage rate is below the

1 California minimum wage. Any and all employer payments required by the prevailing wage  
2 determination must also be paid. If the California minimum wage is increased in the future  
3 to an amount above that shown in the prevailing wage determination, the basic hourly rate  
4 in that determination automatically increases to the new minimum wage.

5 19. CERTIFIED PAYROLL RECORDS.

6 A. Pursuant to the provisions of Labor Code Section 1776,  
7 Consultant shall keep and shall cause each subcontractor performing any portion of  
8 the work under this Contract to keep an accurate payroll record, showing the name,  
9 address, social security number, work classification, straight time and overtime  
10 hours worked each day and week, and the actual per diem wages paid to each  
11 journeyman, apprentice, worker, or other employee employed by Consultant or  
12 subcontractor in connection with the work. Such payroll records for Consultant and  
13 all subcontractors shall be certified and shall be available for inspection at all  
14 reasonable hours at the principal office of Consultant pursuant to the provisions of  
15 Section 1776 of the Labor Code. Consultant's failure to furnish such records to City  
16 or City's authorized Labor Compliance representative in the manner provided herein  
17 for notices shall entitle City to withhold the penalty prescribed by law from progress  
18 payments due to Consultant.

19 B. Contractor and every subcontractor and supplier shall be  
20 required to submit certified payrolls and labor compliance documentation  
21 electronically at the discretion of and the manner specified by the City. Consultant  
22 shall submit to the City certified payroll records for Consultant and all subcontractors  
23 performing any portion of the work under this Contract on a monthly basis. Certified  
24 payroll records for Consultant and all subcontractors shall be maintained during the  
25 course of the work and shall be kept by Consultant for up to three (3) years after  
26 completion of the work.

27 C. The foregoing is in addition to, and not in lieu of, any other  
28 requirements or obligations established and imposed by any department of the City

1 with regard to submission and retention of certified payroll records for Consultant  
2 and subcontractors.

3 20. APPRENTICESHIP EMPLOYMENT. The Consultant shall comply  
4 with Section 1777.5 of the Labor Code concerning the employment of apprentices by the  
5 Consultant or any subcontractor under the Consultant and, by submitting a Bid and  
6 executing the Contract, the Consultant stipulates that it shall so comply. Consultant  
7 employing apprentices or trainees under approved programs shall maintain written  
8 evidence of the registration of apprenticeship programs and certification of trainee  
9 programs, the registration of the apprentices and trainees, and the ratios and wage rates  
10 prescribed in the applicable programs. For federally assisted contracts, prospective  
11 bidders should refer to the Federal Davis Bacon Contract Provisions and Related Matters  
12 (29 CFR § 5.5) in Exhibit "F".

13 21. FEDERAL DAVIS BACON REQUIREMENTS. Consultant must  
14 comply with the Federal Wage Decision contained in the Request for Proposal attached  
15 hereto as Exhibit "F" and incorporated herein, as well as all record keeping requirements  
16 of the Davis Bacon Act when required. This Project is subject to the federal rate  
17 CA20220022MOD5. Contractor is advised that they are to apply the higher wage for each  
18 craft when comparing state versus federal rates assigned to this contract. Contractors  
19 utilizing federal assistance will be subject to the federal wage rate applicable at the time of  
20 submitting the request for proposal for each individual project.

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

24 23. INDEMNITY.

25 A. Consultant shall indemnify, protect and hold harmless City, its  
26 Boards, Commissions, and their officials, employees and agents ("Indemnified  
27 Parties"), from and against any and all liability, claims, demands, damage, loss,  
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
2 in connection with (1) Consultant's breach or failure to comply with any of its  
3 obligations contained in this Agreement, or (2) negligent or willful acts, errors,  
4 omissions or misrepresentations committed by Consultant, its officers, employees,  
5 agents, subcontractors, or anyone under Consultant's control, in the performance  
6 of work or services under this Agreement (collectively "Claims" or individually  
7 "Claim").

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

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

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

1 E. The provisions of this Section shall survive the expiration or  
2 termination of this Agreement.

3 24. AMBIGUITY. In the event of any conflict or ambiguity between this  
4 Agreement and any Exhibit, the provisions of this Agreement shall govern.

5 25. NONDISCRIMINATION.

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

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

26 26. FORCE MAJEURE. If any party fails to perform its obligations  
27 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain  
28 labor or materials or reasonable substitutes for labor materials, governmental restrictions,

1 governmental regulations, governmental controls, judicial orders, enemy or hostile  
2 governmental action, pandemic, civil commotion, fire or other casualty, or other causes  
3 beyond the reasonable control of the party obligated to perform, then that party's  
4 performance will be excused for a period equal to the period of such cause for failure to  
5 perform.

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

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

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

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

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

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

28 E. If the City determines that the Consultant has set up or used its

1 contracting entity for the purpose of evading the intent of the EBO, the City may  
2 terminate the Agreement on behalf of the City. Violation of this provision may be  
3 used as evidence against the Consultant in actions taken pursuant to the provisions  
4 of Long Beach Municipal Code section 2.93 et seq., Consultant Responsibility.

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

12 29. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

26 30. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
27 that Consultant has not employed or retained any entity or person to solicit or obtain this  
28 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,



1 commission, or other monies based on or from the award of this Agreement. If Consultant  
2 breaches this warranty, City shall have the right to terminate this Agreement immediately  
3 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
4 due under this Agreement or otherwise recover the full amount of the fee, commission, or  
5 other monies.

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

11 32. CONTINUATION. Termination or expiration of this Agreement shall  
12 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled  
13 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Certified Payroll  
14 Records", "Indemnity", and "Audit" prior to termination or expiration of this Agreement.

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

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

26 35. AUDIT. City shall have the right at all reasonable times during the  
27 term of this Agreement and for a period of five (5) years after termination or expiration of  
28 this Agreement to examine, audit, inspect, review, extract information from, and copy all

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

1 books, records, accounts, and other documents of Consultant relating to this Agreement.

2 36. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
3 designed to or entered for the purpose of creating any benefit or right for any person or  
4 entity of any kind that is not a party to this Agreement.

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

7 AKM CONSULTING ENGINEERS, a  
8 California corporation

9 December 20, 2022

By [Signature]  
10 Name Zeki Kayiran  
Title President

11 December 20, 2022

By [Signature]  
12 Name Mehmet Kayiran  
13 Title Treasurer

14 "Consultant"

15 CITY OF LONG BEACH, a municipal  
16 corporation

17 February 2, 2023

By [Signature]  
City Manager

18 "City"

19 This Agreement is approved as to form on JANUARY 24, 2023

20 CHARLES PARKIN, City Attorney

21 By [Signature]  
22 Deputy  
23  
24  
25  
26  
27  
28

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

# EXHIBIT “A-1”

Request for Proposals (RFP) PW22-069

# **EXHIBIT "A"**

## **SCOPE OF WORK / PROPOSAL**

# EXHIBIT "B"

## RATES

## **EXHIBIT "C"**

**City's Contact**

**Dillion O'Donohue, Civil Engineering Assistant**

**562/570-6596**

**Dillion.Odonohue@LongBeach.Gov**

# **EXHIBIT “D”**

**Materials Provided**

## EXHIBIT "E"

Contractor's Key Employee

Zeki Kayiran, PE, Principal

(949) 753-7333

[zkayiran@akmce.com](mailto:zkayiran@akmce.com)



# EXHIBIT "F"

