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**AGREEMENT BETWEEN THE CITY OF HOLMES BEACH AND
R.E. JOHNSON & SON, INC. DBA JOHNSON HOUSEMOVERS
FOR STRUCTURAL RELOCATION OF STRUCTURE**

This Agreement is entered into this ___ day of August, 2024, between the City of Holmes Beach, located at 5801 Marina Drive, Holmes Beach, Florida, 34217, a municipal corporation organized and existing under the laws of the State of Florida, (the "City"), and R.E. Johnson & Son, Inc. dba Johnson Housemovers (the "Contractor"), whose address is 6470 Jim Davis Road, Parrish, Florida 34219.

NOW THEREFORE, in consideration of the mutual covenants, representations, and agreements herein contained, the Parties agree as follows:

1. **SCOPE OF SERVICES:** Contractor shall move the structure described in **Exhibit 1 (A)** from its present site at 109 48th Street, Holmes Beach, Florida 34217 to a new site located at 3021 Avenue C, Holmes Beach, Florida 34217 for a full contract price of **\$85,000** subject to increase in price change orders as hereinafter provided, in accordance with the specifications set forth in this Agreement and Exhibits. The contract price hereunder shall be exclusive of all costs imposed on the City as set forth in this Agreement.
2. **COMPENSATION:** The City agrees to and does engage Contractor to perform the Scope of Services for compensation described herein in an amount not to exceed **\$85,000** to be paid to Contractor as follows:
 - A. \$42,5000 to begin work;
 - B. \$34,000 upon structure being moved to new site; and
 - C. \$8,500.00 upon completion.

The parties do further agree:

- 2.1 As a condition precedent to receiving payment, Contractor shall have been authorized to proceed by City for the specific task or phase, shall not be in default of any of the terms and conditions of this Agreement and shall provide to City an invoice.

- 2.2 City shall pay all valid, approved, and undisputed invoices pursuant to Florida Statute Section 218.70, the Prompt Payment Act, and all City Policies promulgated thereby. If City disputes any invoice submitted, it shall advise Contractor in writing and said invoice shall not be deemed due and payable under this agreement. Neither the City 's review approval or acceptance of, nor payment for, any services provided hereunder shall be construed to operate as a waiver of any rights under this Agreement and the Contractor shall be liable to City for all damages to City caused by the Contractor's negligent or wrongful performance of any of the services furnished under this Agreement.
- 2.3 Contractor agrees to assign competent professionals to perform the assigned responsibilities and duties faithfully, intelligently, and to the best of their ability, and in the best interest of City during the term of this Agreement. All services provided shall be performed in accordance with this Agreement and with any and all applicable law, professional standards and guidelines. City may request Contractor to make changes in the scope of services or revise the work performed. Any changes or revisions requested by City that are not due to Contractor error, omission or negligence will be incorporated into the scope of services by written amendment to this agreement and the Contractor may be entitled to additional compensation upon the agreement of the parties. Contractor will perform its Services with that level of care and skill ordinarily exercised by other professionals practicing in the same discipline(s), under similar circumstances and at the time and place where the Services are performed.
- 2.4 All payments shall be made to R.E. Johnson & Son, Inc. at 6470 Jim Davis Road, Parrish, Florida 34219. In the event any payment due hereunder is not paid within 30 days after its due date, said payment shall bear interest at the highest rate allowed by law, provided there is no conflict with Section 218.70, Florida Statutes.
3. **AUTHORIZATION TO PROVIDE SERVICES:** Contractor shall not be authorized to provide any services as set forth above until such time as Contractor has received specific authorization from the Mayor, or the Mayor's designee.
4. **CERTIFICATE OF OCCUPANCY:** For the purpose herein, completion of the contract shall not be deemed to require the issuance of a Certificate of Occupancy. Contractor's responsibility in connection with this contract, shall be deemed complete upon the actual delivery of the structure to the site and completion of any additional site work or repair work to the structure as required under the terms of the contract.
5. **METHOD OF CARRYING OUT PROJECT AND RESPONSIBILITIES OF CONTRACTOR:** Contractor shall be responsible for securing all materials, equipment, labor supervision and other items and services necessary for the proper execution of the work included in this contract according to its terms. Contractor shall perform or cause to be

performed all work contemplated by this contract in a sound, workmanlike and substantial manner, and all materials used in any additional construction of improvements shall be new and of a type, make, style and quality specified by the contract documents and furnished and executed so that upon completion the improvements, shall meet the approval of all building and health inspectors of the government of the jurisdiction in which the structure is relocated, as applicable to the building relocation. Contractor reserves the right to substitute materials of equal or better grade, type or manufacture to those specified in the contract documents and if they are not readily available. Where the contract documents do not specifically provide, the quality and manner of construction and materials shall be as selected by Contractor and of good quality, consistent with grade, quality and manner of construction and materials otherwise specified by the contract documents and the Florida Building Code.

6. **SITE PREPARATION:** Unless otherwise provided in this Agreement or by written addendum, City shall be responsible for securing all engineering drawings, architectural drawings, plats, plot plans, and preparation of all site work receiving the structure. Site work shall include compaction of soil requirements, grading requirements, soil poisoning requirements, delivery of utilities to the site, permit fees for utility hookup, septic and drain field work, surveying and location work, and all zoning approval requirements, if any. All costs associated with the requirements set forth in this paragraph shall be in addition to the contract price.
7. **INSPECTION BY CITY:** City shall have the right to inspect the structure before transit and after transit. The City shall not be entitled to conduct inspections at any time during transit of the structure.
8. **TIMING FOR COMMENCEMENT OF WORK:** Contractor shall commence work pursuant to this Agreement as soon as practicable after the full execution of this agreement. Contractor shall thereafter proceed to remove and transport the structure with due diligence. Should Contractor be delayed in prosecution and completion of work by reason of strike, lockout, unavailability of materials, delays in issuance of permits by governmental authorities, delay in securing private rights of way, acts of God or other causes beyond the control and responsibility of the Contractor. Then the time for completion of this contract shall be extended for a period of time equal to such period or delay by reason of such causes aforesaid.
9. **ALLOWANCES:** The contract price includes certain allowances to City for materials and component parts of the contract as set forth in **Exhibit 1 (B)** forming a part of the contract document. If City shall select materials or make changes in such component parts so as to result in an increase to Contractor's cost therefore, the additional cost to the Contractor, including all applicable taxes and other charges to Contractor in connection therewith, shall be added to the contract price.

- 10. CONDITION OF THE BUILDING:** City shall assume all responsibility for prior inspection of the building to ensure its structural integrity. Contractor shall not be liable to owner for any loss or damage arising out of any structural failure of the building during the course of transit other than through negligence of Contractor.
- 11. INSURANCE:** Contractor shall keep in force at their own expense during the period of this contract project, Workman's Compensation for any employees of Contractors, if applicable and General Liability for personal injury and property damage that may arise out of work under this contract in a sufficient amount to cover any anticipated damages.
- 12. PERMITS, RIGHT-OF-WAY, AND RELOCATION OF UTILITIES:** City will secure all permits for this project. City shall be responsible for securing all right-of-way across private property and railways. In the event any utilities must be relocated, raised, or disconnected for purposes of moving the structure, all costs arising therefore shall be paid by City. All costs in this paragraph shall be in addition to the contract price.
- 13. ZONING:** City shall be responsible to ensure that all zoning clearances have been secured for the new site, to include the responsibilities detailed in **Exhibit 1 (C)**.
- 14. DAMAGES TO PERSONAL PROPERTY:** Contractor shall not be liable to City for any loss due to theft, vandalism, fire, or other causes, to the personal property of City left in structure during transit.
- 15. SPECIFICATIONS AND PLANS.** The attached specifications for work are attached hereto as **Exhibit 1 (D)** and made part hereof. Said specifications shall include references on relocation procedure and bracing materials to be utilized during the move. In the event said plans are modified, Contractor reserves the right to adjust the contract price.
- 16. WARRANTY OF CONTRACTOR:** Contractor does hereby expressly warrant and guarantee the services provided hereunder from all defects, failures, faulty construction, and inconsistency with plans, or damage, other than that resulting from reasonable wear and tear or actions of third parties, for a period of one year from the acceptance of the work by City. If such a claim occurs, Contractor shall immediately act to repair, replace, and restore the damaged work or, if applicable, reconstruct the work to make it completely and strictly comply with the agreement documents. All warranty services provided hereunder shall be performed at Contractor's sole expense, including materials and labor. It is expressly agreed and understood that this warranty shall not apply to materials and equipment normally expected to deteriorate or wear out or become subject to normal repair and replacement before their condition is discovered. Additionally, Contractor shall not be required to do normal maintenance work under this provision. Failure of the Contractor to substantially act within thirty (30) days of notice of a claim hereunder shall entitle City, at its sole option, to replace or repair the subject defect and to recover the reasonable costs of said repair from Contractor. The enforcement of the warranty provision shall not be deemed a waiver of any rights that City

may have to declare Contractor in breach of the terms of this agreement and to pursue all available legal remedies.

17. RESPONSIBILITIES OF CITY: The City shall provide full information, as reasonably directed by Contractor, regarding the requirements of the project.

18. AUTHORIZED REPRESENTATIVE OF THE CITY: During the term of this Agreement, the Mayor shall be the designated representative authorized to act on behalf of the City, as provided by law, with respect to the project.

19. INDEMNIFICATION: The Contractor assumes all risk of loss or injury to property or persons caused by its performance of this Agreement. The Contractor agrees to indemnify and hold harmless the City and its agents, directors, employees, officers, and servants from and against all such suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses, or expenses, including but not limited to reasonable attorney's fees caused by a willful or negligent act or omission under this Agreement by the Contractor's officers and employees and any suppliers or subcontractors. The City's liability hereunder is subject to the limitations and provisions of Section 768.28, Florida Statutes, and any other applicable law limiting the City's liability, and nothing herein shall be deemed to waive the sovereign immunity of the City. The obligation to indemnify the City shall include the duty to defend the City and its officials and employees in any action arising out of this Agreement.

20. PROHIBITION AGAINST CONTINGENT FEES: Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee/contractor working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this agreement. For breach or violation of this provision, in addition to all remedies available to City, City shall have the right to terminate this agreement without liability and to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

21. EQUAL EMPLOYMENT OPPORTUNITY:

21.1 Employment. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, disability, or age, and will take affirmative action to ensure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability, or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion,

upgrading, demotion, transfer, layoff or termination, rates of training or retraining, including apprenticeship and on-the-job training.

21.2 Participation. No person shall, on the grounds of race, creed, sex, color, national origin, disability, or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of the Agreement.

22. FORCE MAJEURE: With regard to the performance hereunder, Contractor shall not be deemed to be in default of this agreement, or have failed to comply with any term or conditions herein if, for reasons beyond Contractor 's reasonable control (including, without limitation, acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, permits or other compliance with applicable laws, rules and regulations), such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond Contractor's reasonable control, provided that Contractor commences such performance as soon as reasonably possible and diligently pursues such performance.

23. NOTICES: All notices, elections, requests, and other communications under this Agreement shall be in writing and shall be deemed given in the following circumstances when personally delivered: on the date of delivery after being deposited in the U.S. Mail, postage prepaid, certified, or registered, or on the date of delivery after being deposited with a nationally recognized overnight mail or courier delivery service, and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice to the other party):

The City of Holmes Beach: Mayor Judy Titsworth
City of Holmes Beach
5801 Marina Drive
Holmes Beach, FL 34217
Email: hbmayor@holmesbeachfl.org

Contractor: Name: _____
R.E. Johnson & Son, Inc.
dba Johnson Housemovers
34070 Jim Davis Road
Parrish, Florida 34219
Email: _____

24. GENERAL PROVISIONS:

- 24.1** Pre-suit Mediation: Prior to, and as a condition precedent to the commencement of any lawsuit or administrative proceeding to resolve any disputes arising out of this Agreement the parties agree that the dispute first shall be submitted to non-binding mediation before a business mediation organization approved by the parties. Such mediation shall be held at the City's offices at the address set forth in this Agreement. The parties shall bear the costs of the mediation equally.
- 24.2** Attorneys' Fees and Costs: Should any party to the Agreement be required to sue to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to receive from the non-prevailing party its expenses, fees, and costs, including reasonable attorney's fees, for all pre-lawsuit, lawsuit, and appellate proceedings. The same prevailing party provision shall apply to any arbitration proceedings if the parties agree to resolve a contractual dispute through arbitration.
- 24.3** Controlling Law and Venue: The Contractor and the City agree this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any legal proceedings brought under this Agreement shall be in Manatee County, Florida, and the state courts of Manatee County shall have jurisdiction to hear any proceeding brought under this Agreement.
- 24.4** Remedies: Upon receipt of notice of any defective materials, labor, or work or other failure in the monitoring system provided by the Contractor, the Contractor shall remedy or replace defective programs, materials, equipment or remedy any faulty workmanship within ten (10) calendar days of receipt of notice. This guarantee and warranty provision does not create any limitations on the City as to any claims or legal actions for breach of guaranty or breach of warranty that the City may have against the Contractor or others and does not constitute an exclusive remedy against the Contractor or any other person or entity that provides materials, equipment, or labor for the project.
- 24.5** Relationship of Parties: The parties agree that the Contractor is an independent contractor and the relationship between the City and the Contractor is not that of employer and employee.
- 24.6** Assignment: This Agreement shall be binding upon the parties and shall not be assignable, provided that any request for assignment to a non-affiliated third party by the Contractor shall not be effective unless approved by the City's Board of Commissioners.
- 24.7** Severability: If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

- 24.8** Amendment: This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the City by the City's Board of Commissioners and for the Contractor by a named officer and only if properly executed by all the parties to this Agreement.
- 24.9** Waiver: The waiver by City of breach of any provision of this agreement shall not be construed or operate as a waiver of any subsequent breach of such provision or of such provision itself and shall in no way affect the enforcement of any other provisions of this agreement.
- 24.10** Entire Agreement: This agreement, including the documents incorporated by reference, contains the entire understanding of the parties hereto and supersedes all prior and contemporaneous agreements between the parties with respect to the performance of services by Contractor.
- 24.11** Non-Exclusive Contract: Contractor agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical products/services at its sole option.
- 24.12** Compliance with Law: The Contractor shall perform all the work required under this Agreement in accordance with applicable federal, state, and local statutes, ordinances, rules, and regulations, whether or not expressly set forth in the Agreement Documents. The Contractor shall maintain all required State and local licenses that are required to perform the work and supply the equipment under this Agreement, including registration with "Sunbiz.org" as required by applicable Florida law. The required licenses shall remain valid during the entire term of this Agreement. The Contractor shall provide the City with a copy of all required licenses upon request.

In accordance with Section 448.095(2), Florida Statutes, the Contractor shall comply with all E-Verify requirements in its hiring practices. This Agreement shall be subject to termination as provided in Section 448.095(2), Florida Statutes if the City determines that the Contractor is not in compliance with the requirements of that provision.

- 24.13** Conflict of Interest: The Contractor shall be required to disclose prior to signing this Agreement the name of any officer, director, employee, or agent who may be employed by the City or otherwise affiliated with the City. The Contractor shall disclose the name of any City official or employee who owns, directly or indirectly, any interest in the Contractor's company or any affiliated business entity. Any additional conflicts of interest that may occur during the term of the Agreement must be disclosed to the City immediately upon discovery of the conflict or potential conflict.
- 24.14** Federal and State Taxes: The City is exempt from Federal Tax and State Sales and Use Taxes. Upon written request, the City will provide an exemption certificate to the

Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor shall the Contractor be authorized to use the City's Tax Exemption Number in securing such materials.

- 24.15** Access and Audits: The Contractor shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The City shall have access to all books, records, and documents that the Contractor must maintain in accordance with this Agreement for the purpose of inspection or audit during the Contractor's normal business hours at its usual place of business. If the City determines that the City has overpaid the Contractor because the Contractor has misrepresented its billable time or reimbursable expenses, the Contractor shall deliver the full amount of any overpayment to the City. If the City incurs any fees, costs, or expenses to recover the overpayment amount including, but not limited to, administrative accounting and attorneys' fees, costs, and expenses, then the Contractor must pay the City the full amount of the same as such fees, costs, and expenses come due.

If the City determines that the Contractor has under-billed the City because the Contractor has miscalculated any reimbursable items or rates after submitting the invoice in accordance with this Agreement, the Contractor waives any claim for additional payment for those services or reimbursable items. All invoices submitted to the City pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

- 24.16** Public Records: Pursuant to Section 119.0701, Florida Statutes, the Contractor agrees to:

- (a) Keep and maintain public records required by the public agency to perform the service and supply goods and materials;
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Florida Public Records Act or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the public agency; and
- (d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by

the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS ANY QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 941-708-5800, EXTENSION 226, OR CITYCLERK@HOLMESBEACHFL.ORG, 5801 MARINA DRIVE, HOLMES BEACH, FL 34217.

IN WITNESS WHEREOF, the Parties have signed this Agreement:

CITY OF HOLMES BEACH:

**R.E. JOHNSON & SON, INC. dba
JOHNSON HOUSEMOVERS**

By: _____
Judy Titsworth, Mayor

By: _____

Title: _____

Date: _____

Date: _____

ATTEST:

Stacey Johnston, MMC, City Clerk