

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
CITY OF CLEARWATER AND MOFFAT AND NICHOL, INC. RFQ #24-21
DESIGN SERVICES – CLEARWATER BEACH MARINA REPLACEMENT**

This Agreement for Professional Services (this “AGREEMENT”) is made and entered into on the day of October 2021 by and between the City of Clearwater, Florida (the “CITY”) and Moffatt & Nichol, Inc. (the “ENGINEER”).

WITNESSETH:

WHEREAS, the CITY desires to engage the ENGINEER to perform certain professional services pertinent to such work in accordance with this AGREEMENT; and

WHEREAS, the ENGINEER desires to provide such professional services in accordance with this AGREEMENT; and

WHEREAS, the CITY selected the ENGINEER in accordance with the competitive selection process described in Section 287.055 of the Florida Statutes, and based on information and representations given by the ENGINEER in a response to Request For Qualifications #24-21.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this AGREEMENT, it is mutually understood and agreed as follows:

1.0 GENERAL SCOPE OF THIS AGREEMENT

The relationship of the ENGINEER to the CITY will be that of a professional engineer, and the ENGINEER will provide the professional and technical services required under this AGREEMENT in accordance with acceptable engineering practices, by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of Florida, and ethical standards.

2.0 PROFESSIONAL TECHNICAL SERVICES

2.1 It shall be the responsibility of the ENGINEER to work with and for the CITY to perform an array of services for the City as set forth in RFQ #24-21, Scope of Services.

2.2 The ENGINEER’s services under this AGREEMENT will be provided under a project specific Work Order(s). Each Work Order will include the services for a single project, phase, task, or assignment, and will contain a mutually agreed-upon detailed scope of services, project goals, fee and schedule of performance in accordance with applicable fiscal and budgetary constraints. Work Orders will be incorporated by reference and attached hereto this AGREEMENT.

Total compensation for all services shall not exceed one million four hundred eighty-four thousand one hundred seventy-four U.S. dollars and fifty cents (**\$1,484,174.50**) unless specifically authorized by the Clearwater City Council.

See Work Order attached hereto as Exhibit "B".

- 2.3 The ENGINEER shall maintain a capable and competent staff of professionally qualified personnel available to the CITY for the purpose of rendering the required architectural and/or engineer services hereunder and shall diligently execute the work to meet the completion time established in the Work Orders. The ENGINEER shall notify the CITY by U.S. Mail addressed to the City Engineer of any changes in company contact information, including but not limited to contact phone, address, project manager, email addresses, etc.
- 2.4 The CITY reserves the right to enter into contracts with other engineering and/or architectural firms for similar services. The ENGINEER will, when directed to do so by the CITY, coordinate and work with other engineering and/or architectural firms retained by the CITY.
- 2.5 The CITY reserves the right to remove any and all projects, phases, tasks or assignments referenced in Section 2.1 of this AGREEMENT. The CITY further reserves the right to enter into contracts with other architectural firms for services related to such projects, phases, tasks or assignments. The ENGINEER will, when directed to do so by the CITY, coordinate and work with other architectural firms retained by the CITY.

3.0 PERIOD OF SERVICES

- 3.1 The ENGINEER shall begin work promptly after receipt of a fully executed Work Order. Receipt of a fully executed Work Order shall constitute written notice to proceed.
- 3.2 If the ENGINEER'S services are delayed for reasons beyond the ENGINEER'S control, the time of performance shall be adjusted as appropriate.
- 3.3 It is the intent of the parties hereto that this AGREEMENT continue in force for a period not to exceed to two (2) years, subject to the provisions for termination contained herein. Assignments that are in progress at the Termination Date shall be completed by the ENGINEER unless specifically terminated by the CITY. Should the ENGINEER be in the progress of completing work under this AGREEMENT at the Termination Date, this AGREEMENT shall continue with all terms, conditions and obligations being in full force and effect until such time as the work is completed. All provisions expressly intended to survive termination shall do so.

4.0 PROFESSIONAL SERVICES/ENGINEER'S COMPETITIVE NEGOTIATION ACT (CCNA)

Professional Services provided under this AGREEMENT are within the scope of the practice of architecture, landscape architecture, professional engineering, or registered land

surveying and mapping, as defined by the laws of the State of Florida. Provisions of F.S. 287.055 apply.

5.0 GENERAL CONSIDERATIONS

- 5.1** All documents including field books, drawings, specifications, calculations, geotechnical investigation reports, etc., used in the preparation of the work shall be supplied by the ENGINEER and shall become the property of the CITY. The CITY acknowledges that such documents are not intended or represented to be suitable for use by the CITY or others for purposes other than those for which the documents are prepared. Any reuse of these documents without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the CITY's sole risk without liability or legal exposure to the ENGINEER.
- 5.2** The ENGINEER shall prepare preliminary construction cost estimates with each design submittal to verify the proposed design is within the City project budgets. The ENGINEER shall prepare a final estimate of probable construction costs, following CITY approval of the bid documents and other pre-bid activities. The CITY hereby acknowledges that estimates of probable construction costs cannot be guaranteed, and such estimates are not to be construed as a promise that designed facilities will not exceed a cost limitation.
- 5.3** The ENGINEER will provide expert witnesses, if required, to testify in connection with any suit at law. A supplemental agreement will be negotiated between the CITY and the ENGINEER describing the services desired and providing a basis for compensation to the ENGINEER.
- 5.4** Upon the ENGINEER'S written request, the CITY will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the ENGINEER and CITY mutually deem necessary.
- 5.5** The CITY and the ENGINEER each bind themselves and their successors, legal representatives and assigns to the other party to this AGREEMENT and to the partners, successors, legal representatives and assigns of each other party, in respect to all covenants of this AGREEMENT; and, neither the CITY nor the ENGINEER will assign or transfer its interest in this AGREEMENT without written consent of the other.
- 5.6** To the fullest extent permitted by law, the ENGINEER agrees to indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ENGINEER and other persons employed or utilized by the ENGINEER in the performance of this ENGINEER under this AGREEMENT. Notwithstanding any provision herein to the contrary, this paragraph shall not be construed as a waiver of any immunity to which CITY is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall it be interpreted as limiting or in any way affecting any defense CITY may have under § 768.28, Florida Statutes or as

consent to be sued by third parties. The obligations under this paragraph shall expressly survive termination or expiration of this AGREEMENT.

- 5.7** The ENGINEER agrees not to engage the services of any person or persons in the employ of the CITY to an allied capacity, on either a full or part-time basis, on the date of the signing of this AGREEMENT, or during its term.
- 5.8** Key personnel assigned to the CITY's projects by the ENGINEER shall not be removed from the projects until alternate personnel acceptable to the CITY are approved in writing by the CITY. Key personnel are identified as: Project Manager and technical experts.
- 5.9** The ENGINEER shall attach a brief status report on the projects with each request for payment.
- 5.10** Unless otherwise required by law or judicial order, the ENGINEER agrees that it shall make no statements, press releases or other public communication concerning this AGREEMENT or its subject matter or otherwise disclose or permit to be disclosed any of the data, technical processes, business affairs or other information obtained or furnished in the conduct of work under this AGREEMENT without first notifying the CITY and securing its consent in writing. The ENGINEER also agrees that it shall not publish copyright or patent any of the site-specific data or reports furnished for or resulting from work under this AGREEMENT. This does not include materials previously or concurrently developed by the ENGINEER for "In House" use. Only data and reports generated by the ENGINEER under this AGREEMENT shall be the property of the CITY.
- 5.11** Public Records. The ENGINEER will be required to comply with Section 119.0701, Florida Statutes, as may be amended from time to time, specifically to:

IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

ENGINEER shall comply with the following:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- 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 for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

- c) Ensure that the public records that are confidential or exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, 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 contract, 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 contract, 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.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 - 1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - 2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

- i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

6.0 COMPENSATION

- 6.1 The ENGINEER shall be compensated for services rendered under this AGREEMENT in accordance with the provisions of each Work Order, upon presentation of ENGINEER'S invoice and as provided for below.
- 6.2 Compensation for services shall be invoiced by the ENGINEER and paid by the CITY in accordance with the Florida Local Government Prompt Payment Act, § 218.70, Florida Statutes.
- 6.3 The ENGINEER agrees to allow full and open inspection of payroll records and expenditures in connection with hourly rate and cost-plus fixed fee work assignments upon request of the CITY.

7.0 PROHIBITION AGAINST CONTINGENT FEES

The ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER to solicit or secure this AGREEMENT and that it has not paid or agreed to pay any persons, company, corporation, individual or Firm, other than a bona fide employee working for the ENGINEER any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT.

8.0 TERMINATION FOR CAUSE

This AGREEMENT may be terminated by either party with seven (7) days prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this AGREEMENT is terminated, the ENGINEER shall be paid in accordance with the provisions of outstanding Work Orders for all work performed up to the date of termination.

9.0 SUSPENSION, CANCELLATION OR ABANDONMENT

If the project described in any Work Order is suspended, canceled, or abandoned by the CITY, without affecting any other Work Order or this AGREEMENT, the ENGINEER shall be given five (5) days prior written notice of such action and shall be compensated

for professional services provided up to the date of suspension, cancellation or abandonment.

10.0 GOVERNING LAW AND VENUE

This AGREEMENT shall be administered and interpreted under the laws of the State of Florida. The exclusive venue for any proceeding or suit in law or equity arising from or incident to this AGREEMENT will be in Pinellas County Florida.

11.0 TERMINATION FOR CONVENIENCE

Either the CITY or the ENGINEER may terminate the AGREEMENT at any time by giving written notice to the other of such termination and specifying the effective date of such termination at least thirty (30) days before said termination date. If the AGREEMENT is terminated by the CITY as provided herein, the ENGINEER will be paid for services rendered through the date of termination.

12.0 PUBLIC ENTITY CRIMES

Pursuant to Florida Statute § 287.132-133, the City of Clearwater, as a public entity, may not accept any proposal from, award any contract to, or transact any business in excess of the threshold amount provided in § 287.017, F.S., for Category Two (currently \$35,000) with any person or affiliate on the convicted vendor list for a period of 36 months from the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to § 287.133 (3)(f), F.S. By submitting a proposal, ENGINEER is certifying that Florida Statute 287.132 and 287.133 does not restrict submission.

13.0 SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS

The ENGINEER will be required to comply with Section 287.135, Florida Statutes, specifically by executing the forms provided (attached).

14.0 RFO #24-21, STANDARD TERMS AND CONDITIONS

All terms and conditions as set forth in RFQ #24-21, Standard Terms of Conditions are incorporated by reference and hereto attached as Exhibit "A".

15.0 ORDER OF PRECEDENCE

Any inconsistency in documents relating to this AGREEMENT shall be resolved by giving precedence in the following order: (i) this AGREEMENT and subsequent Amendments; (ii) RFQ #24-21, Standard Terms and Conditions; and (iii) Work Orders.

16.0 INSURANCE REQUIREMENTS

Insurance Requirements are set forth in Exhibit "C", which is incorporated by reference and attached hereto.

17.0 TERMINATION FOR LACK OF FUNDING

The CITY'S performance and obligation to pay under this AGREEMENT is contingent upon an annual appropriation by the Clearwater City Council. In the event the Clearwater City Council does not appropriate funds in a sufficient amount for the CITY to perform its obligations hereunder, the CITY may terminate this AGREEMENT upon thirty (30) days written notice to the ENGINEER.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT on the date and year first above written.

MOFFATT & NICHOL, INC.,
A California Corporation

By: _____

Print Name: _____

Title: _____

WITNESS:

By: _____

Print Name: _____

Countersigned:

CITY OF CLEARWATER

Frank Hibbard
Mayor

Micah Maxwell
Interim City Manager

Approved as to form:

Attest:

Matthew J. Mytych, Esq.
Assistant City Attorney

Rosemarie Call
City Clerk

SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS WITH CUBA AND SYRIA
CERTIFICATION FORM

PER SECTION III, ITEM 25, IF YOUR BID IS \$1,000,000 OR MORE, THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED, MAY DEEM YOUR SUBMITTAL NONRESPONSIVE.

The affiant, by virtue of the signature below, certifies that:

1. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaging in business operations in Cuba and Syria; and
2. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria; and
3. Business Operations means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce; and
4. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria.

Authorized Signature

Printed Name

Title

Name of Entity/Corporation

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____, by _____ (name of person whose signature is being notarized) as the _____ (title) of _____ (name of corporation/entity), personally known to me as described herein _____, or produced a _____ (type of identification) as identification, and who did/did not take an oath.

Notary Public

Printed Name

My Commission Expires: _____

NOTARY SEAL ABOVE

SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST CERTIFICATION FORM
PER SECTION III, ITEM 25, THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED, MAY DEEM YOUR SUBMITTAL NONRESPONSIVE.

The affiant, by virtue of the signature below, certifies that:

5. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
6. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
7. "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered as evidence that a company is participating in a boycott of Israel; and
8. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel.

Authorized Signature

Printed Name

Title

Name of Entity/Corporation

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, on this _____ day of _____, 20____, by _____ (name of person whose signature is being notarized) as the _____ (title) of _____ (name of corporation/entity), personally known to me as described herein _____, or produced a _____ (type of identification) as identification, and who did/did not take an oath.

Notary Public

Printed Name

My Commission Expires: _____
NOTARY SEAL ABOVE