

1 AGREEMENT

2 36092

3 THIS AGREEMENT is made and entered, in duplicate, as of July 7, 2021 for
4 reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on July 6, 2021, by and between MOFFATT & NICHOL,
6 a California corporation ("Consultant"), with a place of business at 4225 East Conant
7 Street, Suite 101, Long Beach, California 90808, and the CITY OF LONG BEACH, a
8 municipal corporation ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to
10 be performed in connection with as-needed professional engineering services ("Project");
11 and

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

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

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay for
25 these services in the manner described below, in an amount not to exceed Four
26 Million Five Hundred Thousand Dollars (\$4,500,000), at the rates or charges shown
27 in Exhibit "B".

28 B. The City's obligation to pay the sum stated above for any one

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

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

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

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

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

4 2. TERM. The term of this Agreement shall commence at midnight on
5 August 1, 2021, and shall terminate at 11:59 p.m. on July 31, 2023, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The term may be extended for three (3) additional one-year periods, at
8 the discretion of the City Manager.

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, Contractor shall procure and maintain at Contractor'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 officials, employees, and agents as additional insureds on a form
16 equivalent in coverage scope to ISO CG 20 10 11 85 from and against claims,
17 demands, causes of action, expenses, costs, or liability for injury to or death
18 of persons, or damage to or loss of property arising out activities performed
19 by or on behalf of the Contractor in an amount not less than Two Million
20 Dollars (US \$2,000,000) per occurrence and Four Million Dollars (US
21 \$4,000,000) in general aggregate. Such insurance shall not exclude XCU
22 (explosion, underground, and collapse) perils, sudden and accidental
23 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 insurer's right of subrogation against the City of Long Beach and its officials,

1 employees, and agents. If there's work on, in, or under the water, this must
2 include Jones' Act and Longshore and Harbor Workers' Act coverage, as
3 appropriate.

4 iii. Only if use of a vehicle is part of the scope of services,
5 commercial automobile liability insurance equivalent in coverage scope to
6 ISO CA 00 01 06 92 in an amount not less than Five Hundred Thousand
7 Dollars (US \$500,000) combined single limit (CSL) covering Symbol 1 ("any
8 auto").

9 iv. Professional liability or errors and omissions liability
10 insurance in an amount not less than One Million Dollars (\$1,000,000) per
11 claim and in aggregate covering the engineering, traffic engineering,
12 planning, or other professional services provided pursuant to this Agreement.

13 v. If Contract involves the removal, transportation and/or
14 disposal of hazardous materials, Pollution/Environmental Impairment Liability
15 Coverage shall be required as follows: Limits of Insurance: \$2,000,000 Per
16 Occurrence/Per Claim and \$4,000,000 Per Occurrence/Per Claim – Policy
17 Aggregate; Claims Made coverage must be maintained for a period of at least
18 three (3) years after final payment under the Contract; and The City of Long
19 Beach and its officials, employees, and agent shall be added as an additional
20 insured, and the policy shall contain no insured vs. insured exclusion. The
21 pollution/environmental impairment liability insurance shall include coverage
22 for, without limitation:

- 23 (a) Bodily injury and property damage to third parties;
- 24 (b) Natural resource damages;
- 25 (c) Pollution clean-up costs, including restoration or
26 replacement costs;
- 27 (d) Defense costs;
- 28 (e) Fines, penalties, and punitive damages;

1 (f) Transportation of waste material by or on behalf
2 of the Covered Party;

3 (g) Disposal liability for pollution conditions on, at,
4 under, or emanating from any disposal site, location or facility used by
5 or on behalf of the Contractor for disposal of waste;

6 (h) Contractual Liability Coverage;

7 (i) Lead, Silica, Asbestos and Mold Coverages;

8 (j) Underground Storage Tank Coverage.

9 vi. Umbrella liability (in excess of liability coverages as
10 delineated above in (a), (c), and (d)) in an amount not less than Four Million
11 Dollars (\$4,000,000) per claim covering the services provided pursuant to
12 this Agreement if total costs of project are less than \$10 million; for projects
13 with total costs \$10 million to \$25 million or any projects airside, umbrella
14 liability (in excess of liability coverages as delineated otherwise in the
15 agreement) in an amount not less than Nine Million Dollars (\$9,000,000) per
16 claim covering the services provided pursuant to this agreement should be
17 provided; and, for the projects with costs greater than \$25 million to \$100
18 million, umbrella liability (in excess of liability coverages as delineated
19 otherwise in the agreement) in an amount not less than Fourteen Million
20 Dollars (\$14,000,000) per claim covering the services provided pursuant to
21 this agreement should be provided.

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

1 insurance or self-insurance maintained by City.

2 C. Any subcontractors which Contractor may use in the
3 performance of this Agreement shall be required to indemnify the City to the same
4 extent as the Contractor and to maintain insurance in compliance with the provisions
5 of this section.

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

20 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
21 contemplates the personal services of Consultant and Consultant's employees, and the
22 parties acknowledge that a substantial inducement to City for entering this Agreement was
23 and is the professional reputation and competence of Consultant and Consultant's
24 employees. Consultant shall not assign its rights or delegate its duties under this
25 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
26 of City, except that Consultant may with the prior approval of the City Manager of City,
27 assign any moneys due or to become due the Consultant under this Agreement. Any
28 attempted assignment or delegation shall be void, and any assignee or delegate shall

1 acquire no right or interest by reason of an attempted assignment or delegation.
2 Furthermore, Consultant shall not subcontract any portion of its performance without the
3 prior approval of the City Manager or designee, or substitute an approved subconsultant
4 or contractor without approval prior to the substitution. Nothing stated in this Section shall
5 prevent Consultant from employing as many employees as Consultant deems necessary
6 for performance of this Agreement.

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

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

21 9. OWNERSHIP OF DATA. All materials, information and data
22 prepared, developed, or assembled by Consultant or furnished to Consultant in connection
23 with this Agreement, including but not limited to documents, estimates, calculations,
24 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
25 models, reports, summaries, drawings, designs, notes, plans, information, material, and
26 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
27 in a format identified by City, and City shall have the unrestricted right to use and disclose
28 the Data in any manner and for any purpose without payment of further compensation to

1 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
2 Data shall not be made available to any person or entity for use without the prior approval
3 of City. This warranty shall survive termination of this Agreement for five (5) years.

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

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

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

28 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

19 15. LAW. This Agreement shall be construed in accordance with the laws
20 of the State of California, and the venue for any legal actions brought by any party with
21 respect to this Agreement shall be the County of Los Angeles, State of California for state
22 actions and the Central District of California for any federal actions. Consultant shall cause
23 all work performed in connection with construction of the Project to be performed in
24 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
25 county or municipal governments or agencies (including, without limitation, all applicable
26 federal and state labor standards, including the prevailing wage provisions of sections 1770
27 et seq. of the California Labor Code); and (2) all directions, rules and regulations of any
28 fire marshal, health officer, building inspector, or other officer of every governmental

1 agency now having or hereafter acquiring jurisdiction.

2 16. WORK DAY. Contractor shall comply with Sections 1810 through
3 1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a
4 penalty to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by
5 Contractor or any subcontractor for each calendar day such worker is required or permitted
6 to work more than eight (8) hours unless that worker receives compensation in accordance
7 with Section 1815.

8 17. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE.
9 Contractor is advised that this work constitutes a public work of improvement subject to
10 California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant
11 to Labor Code Section 1771.1. Contractor or subcontractors shall not be qualified to bid
12 on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public
13 contract Code, or engage in the performance of any contract for public work, as defined in
14 the California Labor Code, unless currently registered and qualified to perform public work
15 pursuant to Section 1725.5. Contract (or associated subcontracts) shall not be entered into
16 without proof of the Contractor's (or subcontractor's) current registration to perform public
17 work pursuant to Section 1725.5. All work conducted in support of this public work of
18 improvement is subject to compliance monitoring and enforcement by the Department of
19 Industrial Relations. Contractor will abide by all applicable apprenticeship requirements in
20 the California Labor Code Section 1777.5 and will be responsible for subcontractor
21 apprenticeship compliance to the same.

22 18. PREVAILING WAGE RATES. Contractor is directed to pay the
23 general rate of per diem wages for each craft, classification, or type of worker needed to
24 execute the contract (prevailing wage rates). Copies of the current prevailing rate of per
25 diem wages are on file at is principle office (Labor Compliance Division, 411 W. Ocean
26 Boulevard, 6th Floor, Long Beach, California, 90802), and shall be made available to any
27 interested party upon request. Contractor is required to post a copy of the determination of
28 the director of the prevailing rate of per diem wages at each job site. Pursuant to Section

1 1775, Contractor shall forfeit, as a penalty to the City, up to Two Hundred Dollars (\$200)
2 for each laborer, worker or mechanic employed for each calendar day, or portion thereof,
3 that such laborer, worker or mechanic is paid less than the prevailing wage rates for any
4 work done by Contractor, or any subcontractor, under this Contract. The difference
5 between the prevailing wage rates and the amount paid to each worker for each calendar
6 day or portion thereof for which each worker was paid less than the prevailing wage rate
7 shall be paid to each worker by the Contractor or subcontractor.

8 19. CERTIFIED PAYROLL RECORDS.

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

22 B. Contractor shall submit to the City certified payroll records for
23 Contractor and all subcontractors performing any portion of the work under this
24 Contract on a monthly basis. Certified payroll records for Contractor and all
25 subcontractors shall be maintained during the course of the work and shall be kept
26 by Contractor for up to three (3) years after 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 Contractor
2 and subcontractors

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

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

11 E. The provisions of this Section shall survive the expiration or
12 termination of this Agreement.

13 22. AMBIGUITY. In the event of any conflict or ambiguity between this
14 Agreement and any Exhibit, the provisions of this Agreement shall govern.

15 23. NONDISCRIMINATION.

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

25 B. It is the policy of City to encourage the participation of
26 Disadvantaged, Minority and Women-owned Business Enterprises in City's
27 procurement process, and Consultant agrees to use its best efforts to carry out this
28 policy in its use of subconsultants and contractors to the fullest extent consistent

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

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

16 25. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
17 accordance with the provisions of the Ordinance, this Agreement is subject to the
18 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
19 Long Beach Municipal Code, as amended from time to time.

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

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

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

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

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

10 E. If the City determines that the Consultant has set up or used its
11 contracting entity for the purpose of evading the intent of the EBO, the City may
12 terminate the Agreement on behalf of the City. Violation of this provision may be
13 used as evidence against the Consultant in actions taken pursuant to the provisions
14 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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

22 27. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

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

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

25 31. TAX REPORTING. As required by federal and state law, City is
26 obligated to and will report the payment of compensation to Consultant on Form 1099-
27 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
28 resulting from payments under this Agreement. Consultant shall submit Consultant's

1 Employer Identification Number (EIN), or Consultant's Social Security Number if
2 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
3 Financial Management. Consultant acknowledges and agrees that City has no obligation
4 to pay Consultant until Consultant provides one of these numbers.

5 32. ADVERTISING. Consultant shall not use the name of City, its officials
6 or employees in any advertising or solicitation for business or as a reference, without the
7 prior approval of the City Manager or designee.

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

12 34. THIRD PARTY BENEFICIARY. This Agreement is not intended or
13 designed to or entered for the purpose of creating any benefit or right for any person or
14 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.

MOFFATT & NICHOL, a California corporation

9/3, 2021

By [Signature]
Name ROBERT BEASLEY
Title VICE PRESIDENT

Sept 3, 2021

By [Signature]
Name David Hichel
Title SVP / Secretary

"Consultant"

CITY OF LONG BEACH, a municipal corporation

October 22, 2021

By [Signature]

City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

"City"

This Agreement is approved as to form on October 11, 2021.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

Exhibit A
Scope of Work

SCOPE OF SERVICES: RFP PW20-059 As Needed Engineering Services

3.1 Administrative Duties

3.1.1 When directed, the contractor shall prepare written reports and attend meetings and present information to the City Council or its appointed Commissions.

3.1.2 When directed, the contractor shall analyze the City's needs, and prepare and administer long-and short-range capital improvement programs consistent with the economic capabilities of the City.

3.1.3 The contractor shall attend staff level meetings with City staff, public officials, community leaders, developers, contractors and the general public.

3.1.4 When directed, the contractor shall review and provide written comments on planning programs and land development matters.

3.1.5 When directed, the contractor shall recommend regulations and ordinances pertaining to landscape architectural matters.

3.1.6 When directed, the contractor shall provide technical advice to City personnel assigned to public works activities.

3.1.7 Establish working relationships and coordination with other public agencies, the public and utility companies involving public works, municipal engineering, and landscape matters.

3.2 Capital Projects

3.2.1 The contractor shall prepare plans and specifications for City projects.

3.2.2 The contractor shall provide design, construction administration, and observation services, as well as public outreach for City projects.

3.2.3 The contractor shall provide special reports regarding such matters as capital improvements, construction materials, and maintenance.

3.2.4 The contractor shall provide special landscape architecture reports regarding such matters as landscape image, aesthetics, materials and maintenance.

3.2.5 The contractor shall process the plans and specifications through other agencies for review and approval in connection with special funding programs and permit requirements.

3.3 Topical Services Area Descriptions

3.3.1 Stormwater and Drainage Facilities: Awarded Consultant shall provide engineering and project management services to support the City in maintaining and operating water quality devices, stormwater collection system, stormwater drainage system, pump stations, and flood mitigation efforts to meet the public demand and rules and regulations of the State and Federal mandates. Consultants shall provide all services and work required to complete assessments, studies, recommendations, designs, plans, specifications, and estimates, and construction management for City stormwater and drainage projects.

3.3.2 Bridges and Structures: Awarded Consultant shall provide engineering, project management, and construction management services for bridges and structures throughout the City including, but not limited to, assessment of existing infrastructures, engineering feasibility studies, preparation of material and equipment procurement specifications, performing inspection, evaluation, and/or survey for any structures, providing technical support and recommendations to city personnel, preparing plans, specifications, and estimates for repair and replacement, and providing construction management

3.3.3 Development Review / Plan Check Services: Awarded Consultant shall provide services required to review development plans/permit applications and associated studies including, but not limited to, major building permit site plans and subdivision improvements. The type of improvements to be checked include, but are not limited to, street improvements, ADA services improvements, drainage, grading, erosion and sediment control, sanitary sewer and joint utility plans.

3.3.4 Peer Review of PS&E: Awarded Consultant shall provide engineering services that include, but are not limited to, peer review of plans, specifications, and estimates prepared for capital improvement projects.

3.3.5 Water Quality and Compliance: Awarded Consultant shall provide engineering and project management services to support the City's water quality and compliance commitments that are regulated through the City's Municipal Separate Stormwater Sewer System (MS4) permit regulated by the California State Water Board; provide all services and work required to complete assessments, studies, recommendations, designs, plans, specifications and estimates for City projects.

3.3.6 Ocean / Coastal Engineering: Awarded Consultant shall provide engineering and project management services for coastal habitats and wetlands restoration or remediation throughout the City including, but not limited to, providing detailed design services, value engineering studies, restoring open tidal connections, maintaining or preserving recreation, roadway improvements, permitting for open channel projects, and relocation of utilities.

3.3.7 Computer Mapping and GIS: Awarded Consultant shall provide GIS administration and maintenance support in general, and digitizing services for public works GIS layers. These layers will be transmitted in a GIS geodatabase format in the NAD 83 Zone V California coordinate system, and each feature will be attributed according to the City's standard GIS schema.

3.3.8 Soil / Geotechnical Engineering: Awarded Consultant shall provide professional geotechnical engineering services as needed throughout the life of the project(s) they are selected to perform duties on. Potential services include, but are not limited to, geohazards investigation, geotechnical/seismic investigation, soils testing (e.g. corrosivity, acidity, compression, percolation, boron), recommendation for foundation design, site preparation and other design requirements relevant to the site conditions, geotechnical construction observation and testing during construction and/or renovation for various facility sites. Such services may also include reviewing background information, conducting field exploration studies, laboratory testing and analysis, coordination with engineers, and attendance of various project meetings. All work performed shall comply with applicable codes and regulations.

3.3.9 Airport: Awarded Consultant shall provide engineering and project management services that will include, but are not limited to, design of taxiways and runways, airport system and mater planning, cost estimates, financial planning, involvement in public hearings and meetings, airspace analysis, GIS data collection or any mapping/graphical efforts, and specialized professional consultant services for various development projects at the Long Beach Airport (Airport) which include, but are not limited to, those contained in the Airport's Capital Improvement Plan (ACIP). The work will include periodic or full-time, on-site observation during construction and should comply with applicable rules and regulations.

3.3.10 Miscellaneous Engineering Support Services: Awarded Consultant shall provide miscellaneous engineering services to support the operations of the Department of Public Works, including but not limited to, preparation and monitoring of grant applications and programs, standardization of operation process, procedures, and template documents, and preparation of miscellaneous engineering studies to support capital improvement projects.

Exhibit B
Rate Sheet

Moffatt & Nichol

Rates for PW20-059 On-Call Professional Engineering Services
September 1, 2021 to August 30, 2023

Classification	Hourly Rates
Principal in Charge	\$290
QA / QC Manager	278
Geotechnical Engineer	278
Senior Structural Engineer	278
Structural Engineer	265
Senior Project Manager	278
Project Manager	265
Senior Project Engineer	265
Project Engineer	250
Design Engineer	180
Associate Design Engineer	175
Staff Engineer	165
GIS Technician	200
Senior CAD technician	200
CAD technician	130
Project Administration	120
Senior Plan Checker	Na
Plan checker	Na
Senior Project Scientist	265
Project Scientist	250
Staff Engineer/Scientist	155
Staff Scientist I	165
Staff Engineer/Scientist II	200
CAD Technician II	150
General Clerical	90
Staff Technician	140

- Mileage rate cannot exceed current IRS rate.
- Consultants and Sub Consultants must adhere to this fee schedule. Any classifications not listed in above fee schedule shall be at cost.
- Rates may only be changed by mutual consent with contract amendment.
- Rate includes insurance and overhead costs.
- Reimbursable items at cost.

Exhibit C

City's Representative

Carl Hickman, Interim City Engineer
Carl.Hickman@LongBeach.gov
562/570-6665

Exhibit D

City Provided Services

The City will furnish to Consultant all the available records, master plan studies, and reports, and any other available information that may be helpful to the Consultant in the performance of its assigned projects or assignments.

Additionally, the City will provide:

1. Project Management through an assigned Project Manager (PM) as designated by the City Engineer. The City;s PM will act as the project focal point.
2. Or otherwise make available upon request, reports, drawings, documents, GIS land base maps, records and other data deemed useful for project development.

Exhibit E

Consultant Representative

Eric Nichol, CEO
eric.nichol@moffattnichol.com
562/590-6500