

August 9th, 2024

Michael J. Reso  
Chief Administrative Officer/City Clerk  
City of Bay St Louis  
688 Highway 90  
Bay St Louis, MS

**RE: Bay St. Louis Municipal Harbor – Pier 1 and Loading Deck Bulkhead Repair Design**

Dear Mr. Reso:

Thank you for the opportunity to provide this fee proposal to support the City of Bay St. Louis with the Bay St. Louis (BSL) Marina Bulkhead repairs project. We have included our understanding of the project, our proposed scope of services, and an estimate of fees. We look forward to working with you on this project.

**Project Background**

Moffatt & Nichol (M&N) issued a memorandum dated September 29, 2023, detailing the inspection findings, probable causes, and suggested repair methods, along with associated costs. The repair methods proposed in the memorandum aimed to address the loss of fill behind the bulkhead along its entire length. M&N has prepared this proposal to design Bay St. Louis (BSL) Marina Bulkhead repairs in response to inspection report and directive provided by the City Council subsequent to the M&N presentation given on March 5<sup>th</sup>, 2024, during the City's Monthly Council Meeting. A comprehensive repair solution will be provided that involves repairing the entire length of the bulkhead.

As was confirmed during the meeting, M&N will provide engineering, design and issue for bid (IFB) documents of the repair of the ENTIRE bulkhead. The extent of final issue for bid package will be dependent on the level of available for construction funds dependent. It is our experience that successful bid packages have flexibility built into them, incorporating such innovative bidding concepts such as additive or subtractive bid alternates. The exact nature of the base bid and alternate combination will be developed in consultation with the city.

The Design approach below assumes full repairs as detailed under Global complete repairs in the attached Memo.

**TASK 1 – Engineering and Design for the Bulkhead Repairs**

Based on the site investigations conducted and coordination with the City of Bay St. Louis (BSL), M&N design will include repairs to prevent fill loss behind the concrete sheet pile bulkhead along the entire length of Pier 1 and the perimeter of the loading deck. Design milestones will be met as described below. Reviews by the BSL will follow submission of each deliverable. Design documents will be submitted in an iterative fashion with each submittal incorporating the feedback from the previous submittal.

- Design submittals will include construction plan drawings, specifications, and a design report documenting major design calculations and assumptions. A Class 2 AACE opinion of probable cost will also be prepared.
  - Design packages will be submitted at the following milestones:
    - Preliminary (30%)
    - Progress (60%)
    - Construction (100%)
  - Preliminary (30%) design submittal will include assembling and evaluating all existing data, previous studies and design, and all pertinent available information required for design (Assumed this information will be provided by the City or available through other measures afforded to M&N by the City: i.e. other engineering consultants existing files, work completed in the past). Once evaluated, M&N will develop a preliminary draft of design criteria, prepare site plans.
  - Progress (60%) submittal will include preparation of final design criteria, design and preparation of 60% plans, preparation of outline specifications in accordance with the latest edition of the Mississippi Standard Specifications for Roads and Bridges and City of BSL Standards, Preparation of updated opinion of probable cost estimates based on the preliminary plans, Preparation of all special specifications, specialty item descriptions, and details for the project, Submission of preliminary plans to BSL for review and comments. Any design change requests following this phase will result in a scope and fee change, necessitating an amendment to the engineering fee.
  - Construction (100%) will include Incorporation of City of BSL comments into the final plans, Preparation of final specifications and bidding documents for review by City of BSL. The final plans are to include detailed final drawings for specialty items, layouts, utility locations, if applicable, or any other special details. Preparation and submittal of updated opinion of probable costs based on the final plans and Submittal of engineer stamped, signed final plans.
  - The City of BSL will provide preferred general contracting front end documents and general conditions for the specifications.
  - The Construction (100%) design submittal will include the required engineering plans and specifications to perform the construction.
  - Construction (100%) design plans and specification will be signed and sealed by a licensed professional engineer from the State of Mississippi.
  - Design submittals will be provided in PDF format for full-size sets (22x34) for plans, along with hard copies of 11x17 plans and 8.5 x 11 copies of contract documents and specifications, as requested by the City.
  - M&N will provide the City through the construction bid process, including.
    - Attend the pre-bid conference. The need for a mandatory pre-bid conference will be discussed with the City during the 100% design phase.
    - Respond to contractor requests for additional information (RFIs) and issue bid addendum as needed.
- Evaluate construction bids for completeness, responsiveness and recommend award (if appropriate).
- Construction administration, supervision and inspection support services during active construction are not included in the current scope of service. It is recommended to add these under a separate amendment, with NTP issued at the time of award to the selected contractor.

The budgeted cost to perform Task 1 is \$186,000.

Deliverables: Design Submittals (Preliminary, Progress, and Construction)

Note: Task 1 deliverable does not contain interim recommendations for temporary repairs until the recommended global repair solution is implemented.

Note: City of BSL needs to confirm if this project will be bid as per the Mississippi Public Bid Law.



**PROPOSED SCHEDULE:**

Description	Schedule
Task 1 - Preliminary (30%)	45 days
Task 1 – Progress (60%)	3 Months
Task 1 – Construction (100%)	6 Months

**FEE:**

Task	Title	Billing Format	Fees
1	Engineering and Design for the Bulkhead Repairs	Lump Sum	\$ 186,000
	<b>TOTAL FEE</b>		<b>\$ 186,000</b>

## Compensation and Schedule

M&N will invoice monthly on a percent-complete basis. Reimbursable expenses for the site visit are included in the lump sum fee above.

M&N has estimated the effort required to complete the scope as described above. We have estimated \$186,000. Our fees will accrue on a Lump Sum basis not to exceed the total allocated. Sai Kiran Duvvuri, PE will be the project manager representing the Moffatt & Nichol. Construction support services are not included in the current scope of service.

Our approach to this proposal is based on our understanding of the city's needs and the goals of this project as outlined in our report. If further refinement is required, please don't hesitate to reach out.

Thanks for your time and consideration.

Sincerely,



Jonathan Hird, P.E.  
Vice President  
MOFFATT & NICHOL



AGREEMENT BETWEEN CLIENT AND ENGINEER  
FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made on the 4th day of October, 2024, by and between, the City of Bay St. Louis hereinafter called CLIENT, and Moffatt & Nichol, a California corporation duly registered in the State of Mississippi as Moffatt & Nichol, Inc. ("ENGINEER"), hereinafter called ENGINEER, for the following Project (the "Project"): Bay St. Louis Municipal Harbor – Pier 1 and Loading Deck Bulkhead Repair Design

The CLIENT and ENGINEER for mutual consideration agree as set forth below:

**1. ENGINEER'S SERVICES**

The ENGINEER shall perform professional services in connection with the Project, as set forth below, and as may be further described in Exhibit "A".

**2. ENGINEER'S CHARGES**

In accordance with this Agreement, the ENGINEER shall provide professional services for which the CLIENT shall compensate Engineer and the total compensation shall not exceed the dollar amount indicated herein, and as may be further described in Exhibit "B".

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> LUMP SUM. | Compensation for these services shall be a Lump Sum of <u>\$ 186,000.00 Amount</u> .                   |
| <input type="checkbox"/> TIME AND MATERIALS.  | Compensation for these services will not exceed <u>\$ Dollar Amount</u> without written authorization. |

**3. INSURANCE AND LIABILITY PROVISIONS**

- 3.1. The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage, employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage.
- 3.2. The CLIENT agrees, to the extent allowed by Mississippi law, to limit the ENGINEER's liability to the CLIENT and to all Construction Contractors and Subcontractors on the Project, due to the ENGINEER's professional negligent acts, errors or omissions, such that the total aggregate liability of the ENGINEER to those named shall not exceed the ENGINEER's total fee for services rendered on this Project.

**4. CLIENT'S RESPONSIBILITY**

The CLIENT shall, unless otherwise provided for in this Agreement, at no cost to the ENGINEER:

- 4.1. Furnish to the ENGINEER all survey and all soils data, as well as other Project documentation as may be requested by ENGINEER, and upon which ENGINEER may reasonably rely.
- 4.2. The ENGINEER makes no representations concerning soil conditions and is not responsible for any liability that may arise out of the performance or failure to perform soils investigations and testing.
- 4.3. Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services.



- 4.4. Give prompt written notice to the ENGINEER whenever the CLIENT observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this Agreement.

## **5. REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to ENGINEER's compensation for services performed on an Hourly Rate basis and include expenditures made by the ENGINEER, his employees or his consultants in the interest of the Project.

## **6. PAYMENTS TO THE ENGINEER**

- 6.1. Progress payments shall be made in proportion to services rendered or as otherwise indicated within this Agreement and shall be due and owing upon the ENGINEER's submittal of any invoice. Past due amounts owed shall include a late payment Finance Charge which will be computed at the periodic rate of 1% per month, which is an Annual Percentage Rate of 12%, and will be applied to any unpaid balance 30 days after the date of the original invoice.
- 6.2. The ENGINEER may, upon seven days written notice, suspend services if CLIENT fails to make payments.
- 6.3. No deductions shall be made from the ENGINEER's compensation on account of penalty or other sums withheld from payments to Contractors.
- 6.4. Hourly Rates and Reimbursable Expenses shall be subject to periodic revision as stated on the Rate Schedule. In the event revisions are made during the lifetime of this Agreement, the increased or decreased Hourly Rates and Reimbursable Expenses shall apply to all remaining compensation for services performed by the ENGINEER when such rates provide the basis for the ENGINEER's compensation.
- 6.5. If the Project is delayed or if the ENGINEER's services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven days written notice to the CLIENT, terminate this Agreement and the CLIENT shall compensate the ENGINEER in accordance with the termination provision contained hereinafter in this Agreement.

## **7. GENERAL PROVISIONS**

- 7.1. All Drawings, Specifications and other work data of the ENGINEER for this Project are instruments of service for this Project only and shall remain the property of the ENGINEER whether the Project is completed or not. The CLIENT shall not reuse any of the ENGINEER's instruments of service on extensions of this Project or on any other project without the prior written permission of the ENGINEER. Any unauthorized reuse shall be at the CLIENT's risk and the ENGINEER shall have no liability arising out of such unauthorized reuse of the ENGINEER's instruments of service by the CLIENT OR BY OTHERS ACTING THROUGH THE CLIENT.
- 7.2. Neither the CLIENT nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.





- 7.3. This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed to the termination notice date including Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination.
- 7.4. This Agreement represents the entire and integrated agreement between the CLIENT and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and the ENGINEER.
- 7.5. Any dispute or claim arising out of this Agreement shall be determined as follows: CLIENT and ENGINEER will negotiate in good faith to reach agreement. In the event the dispute or any issues remain unresolved, the disagreement shall be decided by such remedies of law as they are available to the parties. This Agreement shall be governed by the laws of the State of Mississippi.
- 7.6. Should litigation occur between the two parties relating to the provisions of this Agreement, the payment or reimbursement of litigation expenses, collection expenses, witness fees, court costs and attorney's fees incurred by the party prevailing in such litigation shall be as decided by the court.
- 7.7. Neither Party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
- 7.8. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 7.9. The ENGINEER is not responsible for design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work. Omitted services include but are not limited to shoring, scaffolding, underpinning temporary retainment of excavations and any erection methods and temporary bracing.
- 7.10. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.
- 7.11. This Agreement is subject to the Addendum set forth in Exhibit C, which is fully incorporated within this Agreement.
- 7.12. Any estimate of construction costs prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the CLIENT. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such estimates as compared to Contractor bids or actual cost to the CLIENT.
- 7.13. (a) The parties shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders in effect on the date of this Agreement, including applicable non-U.S. laws and regulations.



(b) Neither party shall, directly or indirectly, undertake, cause or permit to be undertaken any activity related to this Agreement that is illegal under any applicable law, regulation, ordinance or other governmental requirement, including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. In addition, no Party shall give, offer, promise or authorize, directly or indirectly, in connection with this Agreement, anything of value to an official, officer, employee or any other person in an official capacity for or on behalf of any government, state-owned enterprise, agents or advisors to other international organizations.

(c) If either party breaches any of the covenants contained in this Article, the non-breaching party shall have the right to immediately terminate this Agreement without penalty and shall be indemnified by the breaching party against all losses arising under this Article 7.12, to the extent permitted by applicable law.

## 8. NOTICES

Any notices required to be given under this Agreement may be given by enclosing the same in a sealed envelope, postage prepaid, addressed as follows:

CLIENT: City of Bay St. Louis  
688 Highway 90  
Bay St. Louis, MS 39520

Attention: Mayor Mike Favre

ENGINEER: Moffatt & Nichol  
301 Main Street, Suite 800  
Baton Rouge, LA 70801

Attention: Jonathan Hird

Notices shall be deposited in the U.S. Postal Service. When so given, such notice shall be given from the time of mailing the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which is in effect as of the day and year first above written when signed by both parties.

**Moffatt & Nichol**  
ENGINEER  
By: Jonathan Hird 10/07/2024  
Name: Jonathan Hird  
Title: Business Unit Leader / Vice President

City of Bay St. Louis, MS  
CLIENT  
By: \_\_\_\_\_  
Name: Mike Favre  
Title: Mayor





EXHIBIT "A"  
STATEMENT OF SERVICES

Moffatt & Nichol Proposal dated August 9, 2024, for Bay St. Louis Municipal Harbor - Pier 1 and Loading Deck Bulkhead Repair Design, attached and incorporated.



EXHIBIT "B"  
COMPENSATION AND PAYMENT

As set out in Moffatt & Nichol's Proposal dated August 9, 2024, for Bay St. Louis Municipal Harbor - Pier 1 and Loading Deck Bulkhead Repair Design, attached and incorporated

## Addendum to City of Bay St. Louis Contracts

**This Addendum between the City of Bay St. Louis, Mississippi (“CLIENT”) and (“ENGINEER”) is an integral part of the contract. ENGINEER acknowledges that CLIENT is a governmental entity and is subject to the laws of the State of Mississippi governing actions of governmental bodies. ENGINEER further acknowledges that CLIENT does not waive, relinquish or forfeit any of the rights, benefits, protections, guaranties or prohibitions that may be provided under any law, statute, regulation or policy. The parties agree that this Addendum is incorporated into the contract and agree that should any provision of the contract conflict with this Addendum, the terms of the Addendum control.**

1. CLIENT contracts are governed by the laws of the State of Mississippi. Any provision that purports to set venue outside of the State of Mississippi is deleted.

U.S. Const. Amend XI; Miss. Code Ann. § 11-11-3; Miss. Code Ann. § 11-45-1; City of Jackson v. Wallace, 196 So. 223 (1940); Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Nowak (November 19, 2005).

2. CLIENT does not waive its sovereign immunity. CLIENT shall only be responsible for liability resulting from the negligent actions of its officers, agents, and employees acting within the course and scope of their official duties.

Miss. Code Ann. § 11-46-1, et seq.

3. CLIENT does not waive its Constitutional Eleventh (11<sup>th</sup>) Amendment immunity.

U.S. Const. Amend. XI.

4. Any reference to CLIENT waiving its right to a trial by jury are deleted.

Miss. AG Op., Chamberlin (October 18, 2002).

5. CLIENT does not agree to any provisions wherein the credit of the State of Mississippi is pledged or loaned in aid of any person, association, or corporation.

Miss. Const. Art. 14 § 258; Miss. AG Op., Stringer (January 25, 2006).

6. Any reference to payment of attorney’s fees by BSL are deleted.

Miss. AG Op., Nowak (January 23, 2009); Miss. AG Op., Stringer

(January 25, 2006).

7. CLIENT does not agree to pay extra compensation, fees, or allowances after service rendered or contract made, or for any payment not authorized by law.

Miss. Const. Art. 4, § 96; Miss. AG Op., Stringer (January 25, 2006).

8. Any references to CLIENT limiting CLIENT's damages to the contract price or any other set amount are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

9. Any references to CLIENT indemnifying or holding harmless the ENGINEER or any other party are deleted, except to the extent permitted by Mississippi law.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

10. Any provisions limiting the time for CLIENT to pursue legal action are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

11. Any reference to CLIENT waiving any cause of action it may have against ENGINEER or any other party as a result of ENGINEER's breach of the contract, or ENGINEER's own negligence or willful misconduct or the negligence or willful misconduct of ENGINEER's employees or agents are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

12. Any reference to CLIENT limiting damages, remedies or waiving any claim are deleted.

Miss. Const. Art. 4 § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

13. Any provisions giving the ENGINEER exclusive control over litigation are deleted. CLIENT does not agree that ENGINEER may represent, prosecute or defend legal actions in the name of CLIENT.

14. Any references to CLIENT submitting to binding arbitration are deleted.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002)

15. With the exception of any expressed limitation of remedies for breach of implied warranties of merchantability and fitness for a particular purpose concerning computer software and services performed on computer hardware and computer software, which are sold between merchants,

any provisions which would limit the ENGINEER's liability to CLIENT or allow ENGINEER to waive any applicable warranties (express or implied) are deleted,.

Miss. Const. Art. 4 § 100; Miss. Code Ann. §75-2-719; Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Chamberlin (October 18, 2002); Miss. AG Op., Long (February 22, 2009).

16. Any references to CLIENT limiting or waiving any common law warranty are deleted, except as permitted by Mississippi law.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

17. CLIENT does not make any warranty.

Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (October 18, 2002).

18. CLIENT will deliver payments to ENGINEER. Any provision that requires CLIENT pay ENGINEER any late charges is governed by Miss. Code Ann. § 31-7-305.

19. CLIENT is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, et seq., and the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. § 27-104-151, et seq.

20. ENGINEER represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq., and will register and participate in the status verification system for all newly hired employees. Any provision penalizing CLIENT for hiring an employee who works for the ENGINEER is deleted.

21. The continuance of any CLIENT contract is based on the availability of funds. Should there be no funds available for any succeeding funding period; the contract will be cancelled as of the end of the funding period with no further obligation on the part of CLIENT. This contract is cancellable with thirty (30) days' notice to the ENGINEER at the end of the fiscal period in the event funds are not appropriated by the funding authority. (Any property covered by a lease shall be returned to lessor).

22. Any provision requiring CLIENT to name the ENGINEER as an additional insured is deleted.

23. Neither party may assign its rights or delegate its duties under the contract without the prior written consent of the other party, which shall not be unreasonably withheld.

24. ENGINEER recognizes that CLIENT, as a political subdivision of the State of Mississippi, enters into this contract only to the extent authorized by Mississippi law.

25. ENGINEER acknowledges that the individual executing the contract on behalf of CLIENT is

doing so only in his/her official capacity only, and to the extent that any provision contained in the contract exceeds his/her authority, ENGINEER agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.

**ENGINEER**

By:

\_\_\_\_\_  
Jonathan Hird, Business Unit Leader/Vice President

Date:

\_\_\_\_\_

**CITY OF BAY ST. LOUIS, MS**

By:

\_\_\_\_\_  
Mike Favre, Mayor

Date:

\_\_\_\_\_