

AGREEMENT FOR PLANNING CONSULTANT SERVICES

This Agreement is made on the 8 day of August, 2023 (the "Effective Date"), by and between the City of Tarpon Springs (the "Client") and McKim & Creed, Inc. (the "Consultant") (collectively, the "Parties").

WHEREAS, the Client has determined that it requires certain continuing Consultant services to facilitate its operations; and

WHEREAS, on April 26, 2023, the City of Tarpon Springs, Florida ("Tarpon Springs") issued Request for Proposals #230139-P-AS ("RFP") ("EXHIBIT A"), for the purpose of receiving statements of proposals from registered professional Consultants to provide Consultant services as described in the RFP (the "Services"); and

WHEREAS, on June 12, 2023, the Consultant responded to the RFP ("EXHIBIT B") and City of Tarpon Springs subsequently selected the Consultant as the most qualified proposer; and

WHEREAS, on July 25, 2023, the Consultant and City of Tarpon Springs awarded an Agreement to Furnish Electrical, Instrumentation, and Control System Services (the "City Contract") wherein the Consultant agreed to perform the Services for City of Tarpon Springs in accordance with the terms and conditions described therein; and

NOW, THEREFORE, in consideration of the mutual agreements set forth hereafter and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Performance of the Services. The Consultant shall make available to Client, and provide to Client as requested, the same Services as are available and provided to City of Tarpon Springs in accordance with the terms and conditions of the City Contract, at the prices specified therein. All references to the "City" or "City of Tarpon Springs" in the City Contract shall, for purposes of this Agreement, mean Client.
2. Additional Services. This Agreement is only for the provision of those Services provided by or made available by Consultant to City of Tarpon Springs in the City Contract. The Parties understand that any other Consultant services Client may wish to acquire may or may not be acquired from Consultant, and will be acquired in accordance with applicable law and Client's procurement code and administrative policies.
3. Incorporation by Reference; Order of Precedence. This Agreement incorporates and makes a part hereof by reference the following documents: (i) the RFP (EXHIBIT A), (ii) the Consultant's response to the RFP (EXHIBIT B), (iii) the City Contract. Notwithstanding any term in the City Contract to the contrary, in the event of any irreconcilable conflict between the terms of these respective documents, the terms in this Agreement shall prevail over the above-listed documents. In the event of any irreconcilable conflict between the terms of the above-listed documents the earlier-listed document shall prevail over conflicting terms in the subsequently listed document.
4. Term and Termination of the Agreement. The term of this agreement shall be for a five (5) year period of performance from the date of contract execution, and may be terminated as provided for in Section 2.21 of the RFP (EXHIBIT A) of the City Contract.
5. Staff Title References. The City Contract refers in various places to certain City of Tarpon Springs officials or employees. The Parties agree that for purposes of this Agreement, references to these officials or employees shall mean the City of Tarpon Springs City Manager, or her/his designee.
6. Public Records Act Compliance. The Consultant and any subconsultants shall comply with all applicable requirements contained in the Florida Public Records Law, including but not limited to any applicable provisions in Florida Statutes § 119.0701. Pursuant to that statute, the Consultant shall:

- (a) Keep and maintain public records required by the Client to perform the Services provided hereunder.
- (b) Upon request from the Client's custodian of public records, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Consultant does not transfer the records to the Client.
- (d) Upon completion of the Agreement, transfer, at no cost, to the Client all public records in the possession of the Consultant or keep and maintain public records required by the Client to perform the service. If the Consultant transfers all public records to the Client upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.

If the Consultant fails to comply with the requirements in this Section, the Client may enforce these provisions in accordance with the terms of this Agreement. If the Consultant fails to provide the public records to the Client within a reasonable time, it may be subject to penalties under Florida Statutes § 119.10.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONSULTANT SHOULD CONTACT THE CLIENT'S CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
410 NORTH RING AVENUE
TARPON SPRINGS, FL 34689
727-942-5614
CITYCLERK1@CTSFL.US**

7. Notices. All notices given pursuant to this Agreement, except as may otherwise be specified in the applicable Account Documentation, shall be sent by certified U.S. mail, return receipt requested, or by tracked overnight courier, or by in-person hand delivery, to the official and address provided below:

Client:
City OF Tarpon Springs

Consultant:
McKim & Creed, Inc.

Attn: City Manager
324 E. Pines Street
Tarpon Springs, FL 34689

Attn: Mike Stoup, PE
McKim & Creed, Inc.
1365 Hamlet Avenue,
Clearwater, Florida, 33756

8. Representations and Warranties.

- a. The Parties represent and warrant to each other that this Agreement constitutes a legal, valid, and binding obligation enforceable in accordance with its terms, and that the execution and performance of the Agreement (i) does not breach any agreement of such Party with any third party, (ii) does not violate any law, rule or regulation, (iii) is within its organizational powers, and (iv) has been authorized by all necessary action of such Party.
- b. Each Party to this Agreement further represents and warrants that all appropriate authority exists so as to duly authorize the person executing this Agreement to so execute the same and fully bind the Party on whose behalf he or she is executing.

9. Miscellaneous.

- a. This Agreement, together with the documents incorporated by reference, constitutes the entire agreement between the Parties and supersedes any prior understanding or agreement between the Parties, either verbal or written, respecting the same subject.
- b. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of one Party at any time to require performance by the other Party of any term in this Agreement shall in no way affect the right of the demanding Party thereafter to enforce same. Nor shall waiver by one Party of any breach of any term of this Agreement by the other Party be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the Party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.
- c. No assignment of this Agreement or any right or responsibility occurring under this Agreement, shall be made in whole or in part by the Consultant without the express written consent of the Client. The Client shall have the right to approve or deny, with or without cause, any proposed or actual assignment by the Consultant. Any assignment of this Agreement made by the Consultant without the express written consent of the Client shall be null and void and shall be grounds for the Town to declare a default of this Agreement.
- d. The laws of the State of Florida shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and shall govern the interpretation of this Agreement. Any and all legal or equitable actions necessary to enforce this Agreement shall be held and maintained solely in the state and federal courts in and for Pinellas County, Florida. Venue shall lie exclusively in Pinellas County.
- e. Notwithstanding Article 9(C) of the City Contract, in any civil, administrative, bankruptcy, or other proceeding concerning this Agreement, each Party shall pay all of their own costs, attorneys' fees and expenses, including all costs, fees, and expenses incurred in any administrative hearing, trial,

appeal, and mediation, notwithstanding the outcome of those proceedings. Each Party hereby waives any award of attorney fees it might otherwise recover as the prevailing Party in such proceedings.

- f. The Consultant shall at all times comply with all laws now in effect or hereafter enacted, which are applicable in any way to the Consultant's officers, employees, agents, or subcontractors, or the delivery of the Consultant's Services to Client.
- g. In case any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof, and this Agreement shall remain operative and binding on the Parties.
- h. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that nothing contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractors.
- i. This Agreement only provides rights and remedies for the Client and Consultant. Notwithstanding anything else contained herein, this Agreement does not provide any rights or remedies for any other Person. There are no third-party beneficiaries under this Agreement.
- j. Pursuant to Florida Statutes § 287.135, the Consultant is not eligible to enter into, or renew, this Agreement if:
 - (i) The Consultant is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List (as identified in Florida Statutes § 215.473);
 - (ii) The Consultant engages in business operations in Cuba or Syria; or
 - (iii) The Consultant is on the Scrutinized Companies that Boycott Israel List (as identified in Florida Statutes § 215.4725), or is engaged in a boycott of Israel.

By entering into this Agreement, the Consultant certifies that it is not on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, and that it is not engaged in a boycott of Israel. The Consultant acknowledges that it will execute a certification to this effect at the time it executes this Agreement.

The Consultant shall notify the Client if, at any time during the term of this Agreement, it is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or that it is engaged in a boycott of Israel. Such notification shall be in writing and provided by the Consultant to the Client within ten (10) days of the date of such occurrence.

In the event the Client determines, using credible information available to the public, that the Consultant has submitted a false certification or that Consultant is found to have been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel, the Client may, in its sole discretion, terminate this Agreement and seek a civil penalty and other

damages and relief against the Consultant, pursuant to Florida Statutes § 287.135. In addition, the Client may pursue any and all other legal remedies against the Consultant.

- k. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers as of the Effective Date.

City of Tarpon Springs, Florida

McKim & Creed, Inc.

By: 

Mark LeCouris, City Manager

By: 

Mike Stoup, P.E.,
Vice President