

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of December 21, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on December 20, 2016, by and between NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS, a California corporation ("Consultant"), with a place of business at 475 Goddard, Suite 200, Irvine, California 92618, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with as-needed construction materials testing and inspection services ("Project"); and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed One Million Dollars (\$1,000,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the

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

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

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

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

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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 City.

4 2. TERM. The term of this Agreement shall commence at midnight on
5 January 1, 2017, and shall terminate at 11:59 p.m. on December 31, 2019, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The parties have the option to extend the term for two (2) additional
8 one-year periods at 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, Kurt Yoshii. City shall have the right to approve any person proposed by
21 Consultant to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,
23 Consultant is and shall act as an independent contractor and not an employee,
24 representative or agent of City. Consultant shall have control of Consultant's work and the
25 manner in which it is performed. Consultant shall be free to contract for similar services to
26 be performed for others during this Agreement; provided, however, that Consultant acts in
27 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
28 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;

1 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
2 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
3 the usual and customary rights, benefits or privileges of City employees. Consultant
4 expressly warrants that neither Consultant nor any of Consultant's employees or agents
5 shall represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
9 duration of this Agreement, from insurance companies that are admitted to write
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best
11 Company or from authorized non-admitted insurance companies subject to Section
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
13 by A.M. Best Company, the following insurance:

14 (a) Commercial general liability insurance (equivalent in scope to
15 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
16 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
17 coverage shall include but not be limited to broad form contractual liability,
18 cross liability, independent contractors liability, and products and completed
19 operations liability. City, its boards and commissions, and their officials,
20 employees and agents shall be named as additional insureds by
21 endorsement (on City's endorsement form or on an endorsement equivalent
22 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
23 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
24 and this insurance shall contain no special limitations on the scope of
25 protection given to City, its boards and commissions, and their officials,
26 employees and agents. This policy shall be endorsed to state that the
27 insurer waives its right of subrogation against City, its boards and
28 commissions, and their officials, employees and agents.

1 (b) Workers' Compensation insurance as required by the California
2 Labor Code and employer's liability insurance in an amount not less than
3 \$1,000,000. This policy shall be endorsed to state that the insurer waives
4 its right of subrogation against City, its boards and commissions, and their
5 officials, employees and agents.

6 (c) Professional liability or errors and omissions insurance in an
7 amount not less than \$1,000,000 per claim.

8 (d) Commercial automobile liability insurance (equivalent in scope
9 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
10 amount not less than \$500,000 combined single limit per accident.

11 B. Any self-insurance program, self-insured retention, or
12 deductible must be separately approved in writing by City's Risk Manager or
13 designee and shall protect City, its officials, employees and agents in the same
14 manner and to the same extent as they would have been protected had the policy
15 or policies not contained retention or deductible provisions.

16 C. Each insurance policy shall be endorsed to state that coverage
17 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
18 written notice to City, shall be primary and not contributing to any other insurance
19 or self-insurance maintained by City, and shall be endorsed to state that coverage
20 maintained by City shall be excess to and shall not contribute to insurance or self-
21 insurance maintained by Consultant. Consultant shall notify City in writing within
22 five (5) days after any insurance has been voided by the insurer or cancelled by the
23 insured.

24 D. If this coverage is written on a "claims made" basis, it must
25 provide for an extended reporting period of not less than one hundred eighty (180)
26 days, commencing on the date this Agreement expires or is terminated, unless
27 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
28 continuing coverage for a period of not less than three (3) years, commencing on

1 the date this Agreement expires or is terminated.

2 E. Consultant shall require that all subconsultants or contractors
3 that Consultant uses in the performance of these services maintain insurance in
4 compliance with this Section unless otherwise agreed in writing by City's Risk
5 Manager or designee.

6 F. Prior to the start of performance, Consultant shall deliver to City
7 certificates of insurance and the endorsements for approval as to sufficiency and
8 form. In addition, Consultant shall, within thirty (30) days prior to expiration of the
9 insurance, furnish to City certificates of insurance and endorsements evidencing
10 renewal of the insurance. City reserves the right to require complete certified copies
11 of all policies of Consultant and Consultant's subconsultants and contractors, at any
12 time. Consultant shall make available to City's Risk Manager or designee all books,
13 records and other information relating to this insurance, during normal business
14 hours.

15 G. Any modification or waiver of these insurance requirements
16 shall only be made with the approval of City's Risk Manager or designee. Not more
17 frequently than once a year, City's Risk Manager or designee may require that
18 Consultant, Consultant's subconsultants and contractors change the amount, scope
19 or types of coverages required in this Section if, in his or her sole opinion, the
20 amount, scope or types of coverages are not adequate.

21 H. The procuring or existence of insurance shall not be construed
22 or deemed as a limitation on liability relating to Consultant's performance or as full
23 performance of or compliance with the indemnification provisions of this Agreement.

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

1 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
2 of City, except that Consultant may with the prior approval of the City Manager of City,
3 assign any moneys due or to become due Consultant under this Agreement. Any
4 attempted assignment or delegation shall be void, and any assignee or delegate shall
5 acquire no right or interest by reason of an attempted assignment or delegation.
6 Furthermore, Consultant shall not subcontract any portion of its performance without the
7 prior approval of the City Manager or designee, or substitute an approved subconsultant
8 or contractor without approval prior to the substitution. Nothing stated in this Section shall
9 prevent Consultant from employing as many employees as Consultant deems necessary
10 for performance of this Agreement.

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
12 certifies that, at the time Consultant executes this Agreement and for its duration,
13 Consultant does not and will not perform services for any other client which would create
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests
15 of that other client. And, Consultant shall obtain similar certifications from Consultant's
16 employees, subconsultants 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 and City shall have the unrestricted right to use and disclose the Data in any manner and
28 for any purpose without payment of further compensation to Consultant. Copies of Data

1 may be retained by Consultant but Consultant warrants that Data shall not be made
2 available to any person or entity for use without the prior approval of City. This warranty
3 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 City.

14 11. CONFIDENTIALITY. Consultant shall keep all 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.

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1 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

1 fire marshal, health officer, building inspector, or other officer of every governmental
2 agency now having or hereafter acquiring jurisdiction.

3 16. PREVAILING WAGES.

4 A. Consultant agrees that all public work (as defined in California
5 Labor Code section 1720) performed pursuant to this Agreement (the "Public
6 Work"), if any, shall comply with the requirements of California Labor Code sections
7 1770 *et seq.* City makes no representation or statement that the Project, or any
8 portion thereof, is or is not a "public work" as defined in California Labor Code
9 section 1720.

10 B. In all bid specifications, contracts and subcontracts for any
11 such Public Work, Consultant shall obtain the general prevailing rate of per diem
12 wages and the general prevailing rate for holiday and overtime work in this locality
13 for each craft, classification or type of worker needed to perform the Public Work,
14 and shall include such rates in the bid specifications, contract or subcontract. Such
15 bid specifications, contract or subcontract must contain the following provision: "It
16 shall be mandatory for the contractor to pay not less than the said prevailing rate of
17 wages to all workers employed by the contractor in the execution of this contract.
18 The contractor expressly agrees to comply with the penalty provisions of California
19 Labor Code section 1775 and the payroll record keeping requirements of California
20 Labor Code section 1771."

21 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
22 constitutes the entire understanding between the parties and supersedes all other
23 agreements, oral or written, with respect to the subject matter in this Agreement.

24 18. INDEMNITY.

25 A. Consultant shall indemnify, protect and hold harmless City, its
26 Boards, Commissions, and their officials, employees and agents ("Indemnified
27 Parties"), from and against any and all liability, claims, demands, damage, loss,
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
2 in connection with (1) Consultant's breach or failure to comply with any of its
3 obligations contained in this Agreement, including any obligations arising from the
4 Project's compliance with or failure to comply with applicable laws, including all
5 applicable federal and state labor requirements including, without limitation, the
6 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
7 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
8 employees, agents, subcontractors, or anyone under Consultant's control, in the
9 performance of work or services under this Agreement (collectively "Claims" or
10 individually "Claim").

11 B. In addition to Consultant's duty to indemnify, Consultant shall
12 have a separate and wholly independent duty to defend Indemnified Parties at
13 Consultant's expense by legal counsel approved by City, from and against all
14 Claims, and shall continue this defense until the Claims are resolved, whether by
15 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
16 breach, or the like on the part of Consultant shall be required for the duty to defend
17 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
18 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
19 in the defense.

20 C. If a court of competent jurisdiction determines that a Claim was
21 caused by the sole negligence or willful misconduct of Indemnified Parties,
22 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
23 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
24 percentage of willful misconduct attributed by the court to the Indemnified Parties.

25 D. The provisions of this Section shall survive the expiration or
26 termination of this Agreement.

27 19. AMBIGUITY. In the event of any conflict or ambiguity between this
28 Agreement and any Exhibit, the provisions of this Agreement shall govern.

1 20. NONDISCRIMINATION.

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

12 B. It is the policy of City to encourage the participation of
13 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
14 procurement process, and Consultant agrees to use its best efforts to carry out this
15 policy in its use of subconsultants and contractors to the fullest extent consistent
16 with the efficient performance of this Agreement. Consultant may rely on written
17 representations by subconsultants and contractors regarding their status.
18 Consultant shall report to City in May and in December or, in the case of short-term
19 agreements, prior to invoicing for final payment, the names of all subconsultants
20 and contractors hired by Consultant for this Project and information on whether or
21 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
22 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

27 A. During the performance of this Agreement, the Consultant
28 certifies and represents that the Consultant will comply with the EBO. The

1 Consultant agrees to post the following statement in conspicuous places at its place
2 of business available to employees and applicants for employment:

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

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

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

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

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

22 22. NOTICES. Any notice or approval required by this Agreement shall
23 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
24 postage prepaid, addressed to Consultant at the address first stated above, and to City at
25 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
26 to the City Engineer at the same address. Notice of change of address shall be given in
27 the same manner as stated for other notices. Notice shall be deemed given on the date
28 deposited in the mail or on the date personal delivery is made, whichever occurs first.

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23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

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

25. WAIVER. The acceptance of any services or the payment of any

money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

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1 26. CONTINUATION. Termination or expiration of this Agreement shall
2 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
3 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

4 27. TAX REPORTING. As required by federal and state law, City is
5 obligated to and will report the payment of compensation to Consultant on Form 1099-
6 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
7 resulting from payments under this Agreement. Consultant shall submit Consultant's
8 Employer Identification Number (EIN), or Consultant's Social Security Number if
9 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
10 Financial Management. Consultant acknowledges and agrees that City has no obligation
11 to pay Consultant until Consultant provides one of these numbers.

12 28. ADVERTISING. Consultant shall not use the name of City, its officials
13 or employees in any advertising or solicitation for business or as a reference, without the
14 prior approval of the City Manager or designee.

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

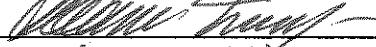
19 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
20 designed to or entered for the purpose of creating any benefit or right for any person or
21 entity of any kind that is not a party to this Agreement.

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1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 NINYO & MOORE GEOTECHNICAL &
4 ENVIRONMENTAL SCIENCES
5 CONSULTANTS, a California corporation

6 _____, 2017

By 
Name Avram Ninyo
Title President

7 January 10, 2017

By 
Name Elaine O. Autus
Title Assistant Secretary

9 "Consultant"

10 CITY OF LONG BEACH, a municipal
11 corporation

12 Jan. 23, 2017

By 
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

13 "City" Assistant City Manager

14 This Agreement is approved as to form on 1/18, 2017.

15 CHARLES PARKIN, City Attorney

16 By 
17 Deputy

18 OFFICE OF THE CITY ATTORNEY
19 CHARLES PARKIN, City Attorney
20 333 West Ocean Boulevard, 11th Floor
21 Long Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work

SCOPE OF WORK PW RFQ16-138

BASIC SERVICES

The Construction Materials Testing and Inspection firm shall provide qualified personnel and shall coordinate its efforts with the on-site Construction Inspector, including scheduling of work, and coordination of the contractors and any other persons on the site of various Capital Improvement projects and other City projects. The Construction Materials Testing and Inspection firm shall serve as a point of contact on construction sites for City staff and project management teams. Responsibilities shall include, but are not limited to:

- Attending preconstruction meetings with the Contractor, Design Team, other consultants, and the City. Review project organization, lines of authority and communication, and project procedures.
- Concur with the Contractor's schedule for, fabrication, inspection, delivery and installation of equipment, materials, and fixtures.
- Testing and reporting on Contractor materials and methods of construction to ascertain compliance with contract requirements.
- Observing work in progress for conformance with plans, specifications, and schedules. Reporting defects and deficiencies to the City.
- Coordinating all daily site inspections performed with City staff and inspectors from other agencies to ensure that materials and their installation are in conformance with plans and specifications.
- Assisting in the selection of independent testing agencies and laboratories. Scheduling their work, reviewing their reports, and making recommendations regarding their findings.
- Maintaining a complete and current record including but not limited to project contracts, drawings and specifications, change orders, directives, project correspondence, revisions, progress photos, testing and inspection reports.
- Maintaining daily job site reports recording daily and weekly activities workmen, equipment in use, general activities completed and special occurrences.
- Monitoring delivery and review of shop drawings and submittals, and assisting in expediting approval of drawings and submittals. Maintaining submittal/approval logs and sets of all such documents, including but not limited to documentation of the submittal number, nature of the submittal, date the submittal was issued, date submittal was forwarded for review, individual reviewing the submittal, date the submittal was received back, and the date the submittal was returned to the Contractor.
- Attending designated progress meetings among Contractor, Design Team, Inspectors, Testing and Laboratory workers, and City representatives. Discussing job progress, tracking and recording key actions and decisions, and preparing and

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reviewing meeting minutes as required.

- Preparing monthly reports addressing project progress and any quality, cost, and schedule issues.
- Collaborating on the review of and processing of RFI's, initiating and maintaining a log for the RFI's including, but not limited to documentation of the RFI number, nature of the RFI, date the RFI was issued, date RFI was forwarded for review, individual reviewing the RFI, date the RFI was received back, and the date the RFI was returned to the Contractor.
- Collaborating on the preparation, review, and processing of construction change orders.
- Collaborating with stakeholders to develop detailed schedule of close-out activities, including punch lists, testing, and inspections. Establishing dates of Substantial and Final Completion, coordinating final inspections and establishing final acceptance of work, and preparing notice of completion.
- At completion of project, submitting to the City one complete project binder containing all project related documentation, and one CD-ROM of all scanned materials.
- Providing Public Works inspection and deputy and/or special inspection as required by code or contract documents. Deputy inspections shall include, but are not limited to: grading, reinforced concrete, prestressed concrete, masonry, structural steel, steel moment and ductile frames, welding, pile driving, high strength bolts, epoxy anchors, fireproofing, and structural observation. Special inspectors shall be duly certified by the ICC and other applicable governing agencies, and licensed to perform special inspections in the City of Long Beach.
- Providing qualified, professional material laboratory testing and reporting as required by code and the City's Project Specifications.

CERTIFIED MATERIAL TESTING LABORATORY SERVICES

- The Material Testing Laboratory must be currently certified for material testing and reporting in accordance with AASHTO, Caltrans, Federal Highway Administration, and Federal Aviation Administration funding requirements, as well as qualified to meet all standards, licenses, reports analysis and recommendations. The consulting laboratory shall coordinate and dispatch qualified personnel to perform material testing and inspection at multiple sites the day following notification. It is desirable that the consulting firm have the ability to dispatch qualified personnel within four hours. The requested services are typically performed between the hours of 7:00 a.m. and 5:00 p.m. seven days a week, but may be required on a 24-hour basis.
- The Material Testing Laboratory services consist of material testing of specimen of concrete, masonry, aggregates, asphalt and asphalt plant inspection, soils, epoxies,

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metal, steel reinforcement, welds, diamond bit coring of asphalt, concrete or masonry, environmental sampling and testing of soil and water, including ground water sampling and testing in accordance with Environmental Protection Agency (EPA) standards, road rating and profilograph testing of streets, and other general laboratory material testing per the City's Project Specifications.

- Certification of Compliance – Upon completion of the project the laboratory shall provide, under the appropriate profession registration, a letter certifying the project.

INSPECTION SERVICES

Inspection Services are classified in two areas of work as follows:

- Construction Inspection – Inspects projects in the public right-of-way and insures that the work and materials are in compliance with the approved project plans and specification, including all applicable laws and regulations.
- Special Inspections – Provides continuous or periodic deputy inspection services as required by code. Special inspections shall include but is not limited to grading, reinforced concrete, pre-stresses concrete, masonry, structural steel, steel moment and ductile frames, welding, pile driving, high strength bolts, epoxy anchors, fireproofing, and structural observations. Special inspectors shall be duly certified by ICC and other applicable governing agencies, and licensed to perform special inspections in the City of Long Beach.

EXHIBIT “B”

Rates or Charges

SCHEDULE OF FEES
City of Long Beach As Needed Construction Materials Testing and Inspection
(January 1, 2017 to December 31, 2020)

HOURLY CHARGES FOR PERSONNEL

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist.....	\$ 188
Senior Engineer/Geologist/Environmental Scientist.....	\$ 178
Senior Project Engineer/Geologist/Environmental Scientist.....	\$ 173
Project Engineer/Geologist/Environmental Scientist.....	\$ 165
Senior Staff Engineer/Geologist/Environmental Scientist.....	\$ 150
Staff Engineer/Geologist/Environmental Scientist.....	\$ 134
GIS Analyst.....	\$ 123
Field Operations Manager.....	\$ 119
Supervisory Technician.....	\$ 95
Nondestructive Examination Technician, UT, MT, LP.....	\$ 100
ACI Concrete Technician.....	\$ 95
Concrete/Asphalt Batch Plant Inspector.....	\$ 95
Special Inspector (Concrete, Masonry, Steel, Welding, and Fireproofing).....	\$ 95
Senior Field/Laboratory Technician.....	\$ 95
Field/Laboratory Technician.....	\$ 95
Technical Illustrator/CAD Operator.....	\$ 98
Information Specialist.....	\$ 83
Geotechnical/Environmental/Laboratory Assistant.....	\$ 81
Data Processing, Technical Editing, or Reproduction.....	\$ 72

OTHER CHARGES

Expert Witness Testimony.....	\$ 400 /hr
PID/FID Usage.....	\$ 150 /day
Concrete Coring Equipment (includes one technician).....	\$ 160 /hr
Anchor load test equipment (includes technician).....	\$ 103 /hr
Hand Auger Equipment.....	\$ 69 /day
Inclinometer Usage.....	\$ 45 /hr
Vapor Emission Kits.....	\$ 45 /kit
Level D Personal Protective Equipment (per person per day).....	\$ 35 /p/d
Rebar Locator (Pachometer).....	\$ 35 /hr
Nuclear Density Gauge Usage.....	\$ 10 /hr
Field Vehicle Usage.....	\$ 0 /hr
Direct Project Expenses.....	At Cost
Laboratory testing, geophysical equipment, and other special equipment provided upon request.	

NOTES (Field Services)

For field and laboratory technicians and special inspectors, regular hourly rates are charged during normal weekday construction hours.

Pre-Approved by the Construction Officer, overtime rates at 1.5 times the regular rates will be charged for work performed outside normal construction hours and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 24 hours. Field Technician rates are based on a 4-hour minimum. Special inspection rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours.

No mileage, transportation charges, or per diem allowed. Pre-approved reimbursable items charged at cost. Sub-consultants billed at cost. Rates can only be changed by amendment.

INVOICES

Invoices will be submitted monthly and are due upon receipt.

TERMS AND CONDITIONS

Must maintain insurance coverage per RFQ SP16-138

SCHEDULE OF FEES FOR LABORATORY TESTING
Laboratory Test, Test Designation, and Price Per Test

Soils

Atterberg Limits, D 4318, CT 204.....	\$ 160
California Bearing Ratio (CBR), D 1883.....	\$ 485
Chloride and Sulfate Content, CT 417 & CT 422.....	\$ 175
Consolidation, D 2435, CT 219.....	\$ 300
Consolidation – Time Rate, D 2435, CT 219.....	\$ 75
Direct Shear – Remolded, D 3080.....	\$ 325
Direct Shear – Undisturbed, D 3080.....	\$ 275
Durability Index, CT 229.....	\$ 165
Expansion Index, D 4829, IBC 18-3.....	\$ 180
Expansion Potential (Method A), D 4546.....	\$ 160
Geofabric Tensile and Elongation Test, D 4632.....	\$ 180
Hydraulic Conductivity, D 5084.....	\$ 330
Hydrometer Analysis, D 422, CT 203.....	\$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils.....	\$ 120
Moisture Only, D 2216, CT 226.....	\$ 35
Moisture and Density, D 2937.....	\$ 45
Permeability, CH, D 2434, CT 220.....	\$ 255
pH and Resistivity, CT 643.....	\$ 175
Proctor Density D 1557, D 698, CT 216, &.....	\$ 200
AASHTO T-180 (Rock corrections add \$100)	
R-value, D 2844, CT 301.....	\$ 295
Sand Equivalent, D 2419, CT 217.....	\$ 110
Sieve Analysis, D 422, CT 202.....	\$ 130
Sieve Analysis, 200 Wash, D 1140, CT 202.....	\$ 100
Specific Gravity, D 854.....	\$ 100
Thermal Resistivity (ASTM 5334, IEEE 442).....	\$ 880
Triaxial Shear, C.D, D 4767, T 297.....	\$ 430
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt..	\$ 365
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt..	\$ 210
Triaxial Shear, U.U., D 2850.....	\$ 155
Unconfined Compression, D 2166, T 208.....	\$ 120
Wax Density, D 1188.....	\$ 100

Masonry

Brick Absorption, 24-hour submersion, C 67.....	\$ 50
Brick Absorption, 5-hour boiling, C 67.....	\$ 60
Brick Absorption, 7-day, C 67.....	\$ 65
Brick Compression Test, C 67.....	\$ 50
Brick Efflorescence, C 67.....	\$ 50
Brick Modulus of Rupture, C 67.....	\$ 45
Brick Moisture as received, C 67.....	\$ 40
Brick Saturation Coefficient, C 67.....	\$ 55
Concrete Block Compression Test, 8x8x16, C 140.....	\$ 65
Concrete Block Conformance Package, C 90.....	\$ 485
Concrete Block Linear Shrinkage, C 426.....	\$ 135
Concrete Block Unit Weight and Absorption, C 140.....	\$ 60
Cores, Compression or Shear Bond, CA Code.....	\$ 60
Masonry Grout, 3x3x6 prism compression, C 39.....	\$ 35
Masonry Mortar, 2x4 cylinder compression, C 109.....	\$ 35
Masonry Prism, half size, compression, C 1019.....	\$ 120
Masonry Prism, Full size, compression, C 1019.....	\$ 185

Reinforcing and Structural Steel

Chemical Analysis, A 36, A 615.....	\$ 135
Fireproofing Density Test, UBC 7-6.....	\$ 60
Hardness Test, Rockwell, A 370.....	\$ 70
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325.....	\$ 130
Mechanically Spliced Reinforcing Tensile Test, ACI.....	\$ 150
Pre-Stress Strand (7 wire), A 416.....	\$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706.....	\$ 55
Structural Steel Tensile Test: Up to 200,000 lbs. (machining extra), A 370.....	\$ 80
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI.....	\$ 60

Concrete

Compression Tests, 6x12 Cylinder, C 39.....	\$ 25
Concrete Mix Design Review, Job Spec.....	\$ 155
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI.....	\$ 825
Concrete Cores, Compression (excludes sampling), C 42.....	\$ 60
Drying Shrinkage, C 157.....	\$ 350
Flexural Test, C 78.....	\$ 65
Flexural Test, C 293.....	\$ 60
Flexural Test, CT 623.....	\$ 80
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI.....	\$ 275
Jobsite Testing Laboratory.....	Quote
Lightweight Concrete Fill, Compression, C 495.....	\$ 45
Petrographic Analysis, C 856.....	\$ 1,900
Restrained Expansion of Shrinkage Compensation.....	\$ 270
Splitting Tensile Strength, C 496.....	\$ 90
3x6 Grout, (CLSM), C 39.....	\$ 45
2x2x2 Non-Shrink Grout, C 109.....	\$ 45

Asphalt Concrete

Air Voids, T 269.....	\$ 50
Asphalt Mix Design, Caltrans (excl. Aggregate Quality).....	\$ 2,800
Asphalt Mix Design Review, Job Spec.....	\$ 165
Dust Proportioning, CT LP-4.....	\$ 50
Extraction, % Asphalt, including Gradation, D 2172, CT 382.....	\$ 240
Film Stripping, CT 302.....	\$ 110
Hveem Stability and Unit Weight D 1560, T 246, CT 366.....	\$ 215
Marshall Stability, Flow and Unit Weight, T 245.....	\$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309.....	\$ 150
Moisture Content, CT 370.....	\$ 85
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371.....	\$ 1,000
Slurry Wet Track Abrasion, D 3910.....	\$ 150
SuperPave, Asphalt Mix Verification (Incl. Aggregate Quality).....	\$ 5,200
SuperPave, Gyrotory Unit Wt., T 312.....	\$ 75
SuperPave, Hamburg Wheel, 20,000 passes, T 324.....	\$ 1,000
Unit Weight sample or core, D 2726, CT 308.....	\$ 100
Voids in Mineral Aggregate, (VMA) CT LP-2.....	\$ 50
Voids filled with Asphalt, (VFA) CT LP-3.....	\$ 50

Aggregates

Clay Lumps and Friable Particles, C 142.....	\$ 160
Cleaness Value, CT 227.....	\$ 160
Crushed Particles, CT 205.....	\$ 165
Durability, Coarse or Fine, CT 229.....	\$ 195
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234.....	\$ 180
Flat and Elongated Particle, D 4791.....	\$ 220
Lightweight Particles, C 123.....	\$ 180
Los Angeles Abrasion, C 131 or C 535.....	\$ 200
Material Finer than No. 200 Sieve by Washing, C 117.....	\$ 75
Organic Impurities, C 40.....	\$ 80
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260.....	\$ 950
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260.....	\$ 1,250
Potential Reactivity of Aggregate (Chemical Method), C 289.....	\$ 450
Sand Equivalent, T 176, CT 217.....	\$ 110
Sieve Analysis, Coarse Aggregate, T 27, C 136.....	\$ 115
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136.....	\$ 130
Sodium Sulfate Soundness, C 88.....	\$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206.....	\$ 100
Specific Gravity and Absorption, Fine, C 128, CT 207.....	\$ 160

Roofing

Roofing Tile Absorption, (set of 5), C 67.....	\$ 210
Roofing Tile Strength Test, (set of 5), C 67.....	\$ 210

Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

Rates can only be change with amendment.

EXHIBIT “C”

City’s Representative:

Marc Wright, Construction Management

(562) 570-5791

EXHIBIT D

CITY FURNISHED 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.