

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 9th day of February, 2024, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio , San Clemente, California, 92673 ("City") and **Avram Ninyo dba Ninyo & Moore Geotechnical & Environmental Science Consultants, a California Sole Proprietorship**, with its principal place of business at **475 Goddard, Irvine, CA 92618** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **as-needed geotechnical & related** consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **as-needed geotechnical & related** consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional **as-needed geotechnical & related** consulting services for **various utilities, civil and transportation projects** (collectively, the "Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **as-needed geotechnical & related** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."

3.1.2 Term. The term of this Agreement shall be from **October 17, 2023 until the work is completed to the City's satisfaction**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The

Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control, the City being only concerned with the finished results of the work being performed. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be solely responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Neither Consultant nor Consultant's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. Consultant is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

3.2.2 PERS Eligibility and Employee Payments Indemnification. In the event that Consultant's employee providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions that would otherwise be the responsibility of the City. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant's employees providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contributions to be paid by City for employer contributions and/or employee contributions for PERS benefits. Consultant agrees to defend and indemnify the City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the PERS, social security, salary or wages, overtime payment, or workers' compensation payment that the City may be required to make for work done under this Agreement. The provisions of this section 3.2.2 are continuing obligations that shall survive expiration or termination of this Agreement.

3.2.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.4 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

3.2.5 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.6 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Kurt Yoshii.**

3.2.7 City's Representative. The City hereby designates **David Rebensdorf**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.8 Consultant's Representative. Consultant hereby designates **Avram Ninjo, PE, GE**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.9 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.10 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed

from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.11 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.12 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Fifty Thousand Dollars (\$50,000.00)** without prior written approval of the City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any

expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

3.4 **Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **Ninyo & Moore Geotechnical & Environmental Science
Consultants
475 Goddard
Irvine, CA 92618
ATTN: Avram Ninyo, PE, GE**

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: **Laura Campagnolo, City Clerk**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for

any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers,

employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts/Electronic Signatures. This Agreement may be signed in counterparts, each of which shall constitute an original. This Agreement may be executed electronically with the same force and effect as original ink signatures.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all

provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

Andy Hall
Andy Hall (Feb 9, 2024 13:03 PST)
Andy Hall, City Manager

Dated: 2/9/24, 2024

ATTEST:

Laura Campagnolo
Laura Campagnolo (Feb 13, 2024 08:07 PST)
CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

Elizabeth A. Mitchell
Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Matthew Schmalz
Finance Authorization

Avram Ninyo dba Ninyo & Moore
Geotechnical & Environmental Science
Consultants
("CONSULTANT")

Avram Ninyo
Avram Ninyo

Dated: February 9, 2024

EXHIBIT "A"
SCOPE OF SERVICES

Consultant shall perform geotechnical consulting services, including as set forth in its attached proposal dated April 22, 2019, which is incorporated fully herein by this reference, as requested by the City on an on-call, as needed basis (collectively, the "Services").

I. Cover Letter

April 22, 2019

Proposal No. 04-02311

Public Works Department
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Subject: Qualifications to Provide As-Needed Geotechnical, Materials Testing and Related Professional Services
City of San Clemente, Public Works Department

Dear Mr. Amir K. Ilkhanipour:

Ninyo & Moore Geotechnical & Environmental Sciences Consultants, is pleased to submit our qualifications to provide the City of San Clemente (City) with As-Needed Geotechnical and Related Professional Services for upcoming capital improvement projects. We have prepared this proposal based on the City's Request for Qualifications (RFQ) issued March 25, 2019. We fully understand the type of services the City requires, and are ready to meet your needs by making available a dedicated team of professionals who have the requisite experience and resources to successfully complete the assignments.

Ninyo & Moore has provided geotechnical engineering and materials testing services, for similar projects for various public agencies throughout California. Some of the advantages Ninyo & Moore can provide to the City include:

- **ON-CALL SERVICES SPECIALIST** – Since our inception in 1986, Ninyo & Moore has provided similar geotechnical engineering, materials testing, inspection, and environmental engineering consulting services for many public agencies in southern California through on-call service contracts. Some of the agencies which we have been awarded on-call contracts include the Cities of Newport Beach, Irvine, Anaheim, Rancho Santa Margarita, and many other cities and public agencies.
- **PROXIMITY** – Our professional consulting services will be performed from our Irvine office and certified soils and materials laboratory, located at 475 Goddard, Suite 200, in Irvine, California. Our local office and laboratory is located just North of San Clemente off the I-5 Freeway in the Irvine Spectrum area. The proximity of our office and laboratory will enable us to provide quick response to requested services and will essentially eliminate delays due to travel time and traffic for our personnel.
- **AVAILABLE RESOURCES** – As one of the largest geotechnical and environmental consulting firms in southern California, Ninyo & Moore employs more than 450 professionals, including in-house professional staff to perform the services in all three major categories for this contract. Our in-house professional and equipment resources enables Ninyo & Moore to deliver efficient services to our clients.
- **CERTIFIED LABORATORIES AND EQUIPMENT** – Our laboratories have been certified/accredited by various agencies including Caltrans, American Association of State Highway and Transportation Officials (AASHTO), Cement and Concrete Reference Laboratory (CCRL), the Division of the State Architect (DSA), the City of Los Angeles, and many other public agencies.

As the contact person who will be authorized to make representations for Ninyo & Moore, I will be readily available and can be reached at telephone number (949) 753-7070 and/or at gsaiki@ninyoandmoore.com to answer any questions during your evaluation period.

We look forward to the opportunity to discuss our capabilities with you personally. Ninyo & Moore appreciates the City's favorable consideration of our proposal.

Respectfully submitted,
NINYO & MOORE



Kurt S. Yoshij, PE, GE
Principal Engineer
GMS/kn

Distribution: 4 (4 hardcopies)



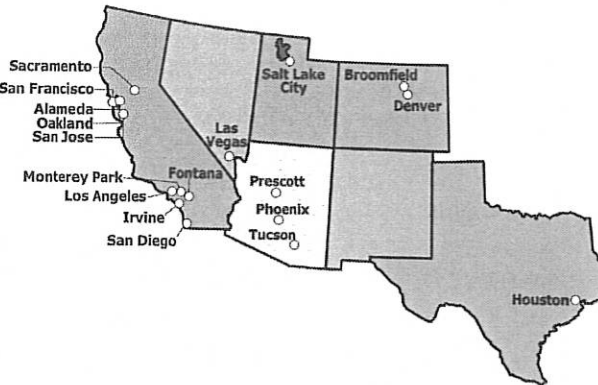
Gareth Saiki, PE, GE
Principal Engineer

475 Goddard, Suite 200 | Irvine, California 92618 | p. 949.753.7070 | www.ninyoandmoore.com

II. Background and Approach

FIRM PROFILE

Ninyo & Moore Geotechnical and Environmental Sciences Consultants, a California Corporation, was established in 1986 to provide consulting services in geotechnical engineering, construction inspection and testing, engineering geology, hydrogeology, hazardous waste remediation and environmental assessment. Since our inception, we have steadily grown to nearly 400 professionals in 18 offices throughout the southwestern United States. Our offices are located in California, Nevada, Arizona, Colorado, Utah, and Texas.



The experience of Ninyo & Moore's geotechnical staff encompasses projects throughout the southwestern United States, including evaluations for roads, highways, storm drains, pipelines, treatment plants, power plants, bridges, municipal and commercial structures, educational, medical and recreational facilities, tunnels, tanks, reservoirs, dams, waste-to-energy facilities, transmission towers, harbors and offshore structures, railroads, airports, low- and high-rise structures, landfills, and other public and private works. Our environmental staff has diverse experience in environmental assessments, water quality evaluations, environmental audits, regulatory compliance studies, water resources development, soil and groundwater contamination studies, and site remediation.

Ninyo & Moore has three fully equipped, certified soils and materials testing laboratory facilities in southern California supervised by registered engineers. Our laboratories are certified by the American Association of State Highway and Transportation Officials (AASHTO), the Cement and Concrete Reference Laboratory (CCRL), California Department of Transportation (Caltrans), DSA, the City of Los Angeles, and many other agencies. Our laboratories are equipped with the necessary testing equipment required for the proposed contract. The quality assurance manual for our laboratories assures that laboratory testing is documented and efficiently performed in accordance with the applicable testing standards. Our testing equipment is calibrated by independent, third-party calibration companies and is re-certified by the various agencies within their required time limitations. In addition to our many certifications, our laboratories participate in soil, asphalt, and concrete proficiency sampling programs, including those administered by the AASHTO Materials Reference Laboratory (AMRL), CCRL, and the Caltrans Reference Sample Program (RSP).










UNDERSTANDING OF THE CITY

Ninyo & Moore is pleased to submit its qualifications to provide as-needed geotechnical and related professional services for future Public Works Projects to the City of San Clemente (City) for the As-Needed Geotechnical, Materials Testing and Related Professional Services Contracts dated March 25, 2019. Based on our review of the City's Request for Qualifications (RFQ), we understand that our services will include as-needed geotechnical investigations consisting of a review of existing geotechnical documents, maps, and photographs; subsurface evaluation using auger, rotary wash, or rock coring methods; laboratory testing of geotechnical samples for classification, soil strength, expansive and consolidation properties; and geotechnical analysis to develop recommendations for the project. In addition, we will provide on-site materials testing, geotechnical observation, and deputy inspections.

Although Ninyo & Moore has never held an on-call contract directly with the City, we have provided geotechnical engineering and materials testing and inspection services as a subconsultant to firms that have held contracts with the City for various projects including the Aquatic Center Locker Rooms, the San Clemente Library, and various storm drain, sewer, reclaimed water expansions, reservoir, and street improvement projects, as well as 3rd party forensic work. Therefore, we are very familiar with the soils and geologic conditions within the San Clemente City limits. This includes our knowledge of the potentially expansive and low-strength properties of the Capistrano formation and the significant presence of landslides within the City limits.

III. Methodology

Ninyo & Moore has developed a specific project approach for administering on-call/as-needed contracts for public agencies. This approach allows our project manager to remain as the single point-of-contact throughout the duration of the contract, ensuring that our work product is consistent and meets the agencies requirements. If necessary, he will utilize our pool of experienced and qualified task managers to oversee specific task order assignments should multiple task orders be assigned concurrently. Our large pool of staff engineers, geologists, field/laboratory technicians and inspectors enables us to provide our personnel on-site when requested without delay. Our approach has resulted in many satisfied public agency clients.

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|--|-----------|---|---|
| <p>1. Develop Scope of Work – The initial step in our approach is to meet with the City Project manager in order to get clear understanding of the project and our expected services. For the geotechnical evaluation, we will develop a detailed scope of work, including the number and type of subsurface explorations, laboratory test, as well as the type of analyses. For the materials testing and inspection services, we will review the approved plans and specifications and will develop a detailed scope of services indicating anticipated man-hours by discipline for the required materials testing and inspection services. We will submit this plan to the City Project Manager for approval and will provide monthly updates to the City Project Manager as construction progresses.</p> | <p>01</p> | <p>Develop Scope of Work Based on Approved Plans & Specifications</p> |  |
| <p>2. Project Personnel Utilization – Upon approval of our scope of work, we will assign the appropriately certified personnel to the project based on the specific needs of the project. Our large pool of licensed professional geotechnical engineers, civil engineers, and certified engineering geologists will be utilized for our geotechnical investigation. Our multiple-certified special deputy inspectors and our certified field and laboratory technicians will be readily available for assignment during construction. Our project management approach and in-house computerized data base ensure that we have the appropriately certified personnel assigned during construction. We will also review the contractor's schedule in order to plan accordingly and anticipate the future inspections and testing requests.</p> | <p>02</p> | <p>Project Personnel Utilization</p> |  |
| <p>3. Sampling Protocol and Document Control – We will next establish the sampling protocols required for the project, based on the project specifications and the requirements of the local building code, and other governing specifications. Our document control system provides unique identification of daily reports and laboratory conformance testing for each project assignment. These systems are a part of our Quality Systems Program and will be utilized for each task order assignment.</p> | <p>03</p> | <p>Develop Sampling Protocols & Documentation Controls</p> |  |
| <p>4. Establish Communication Lines – The next step in our approach is to establish the communication lines for the project, including the authorized City representative who will be requesting our services. We will also request the approved distribution list for our inspection reports, daily field reports, and laboratory conformance test results. On past projects, Project Managers have coordinated our services in the field and distributed our reports. On other past projects, we were scheduled by on-site</p> | <p>04</p> | <p>Establish Communication Lines</p> |  |
| <p>5. Utilize Established Project Controls</p> | <p>05</p> | <p>Utilize Established Project Controls</p> |  |
| <p>6. Perform Field Inspection & Laboratory Testing</p> | <p>06</p> | <p>Perform Field Inspection & Laboratory Testing</p> |  |
| <p>7. Quality Assurance Review</p> | <p>07</p> | <p>Quality Assurance Review</p> |  |
| <p>8. Submit Written Reports</p> | <p>08</p> | <p>Submit Written Reports</p> |  |
| <p>9. Project Closeout & Successful Project Completion</p> | <p>09</p> | <p>Project Closeout & Successful Project Completion</p> |  |

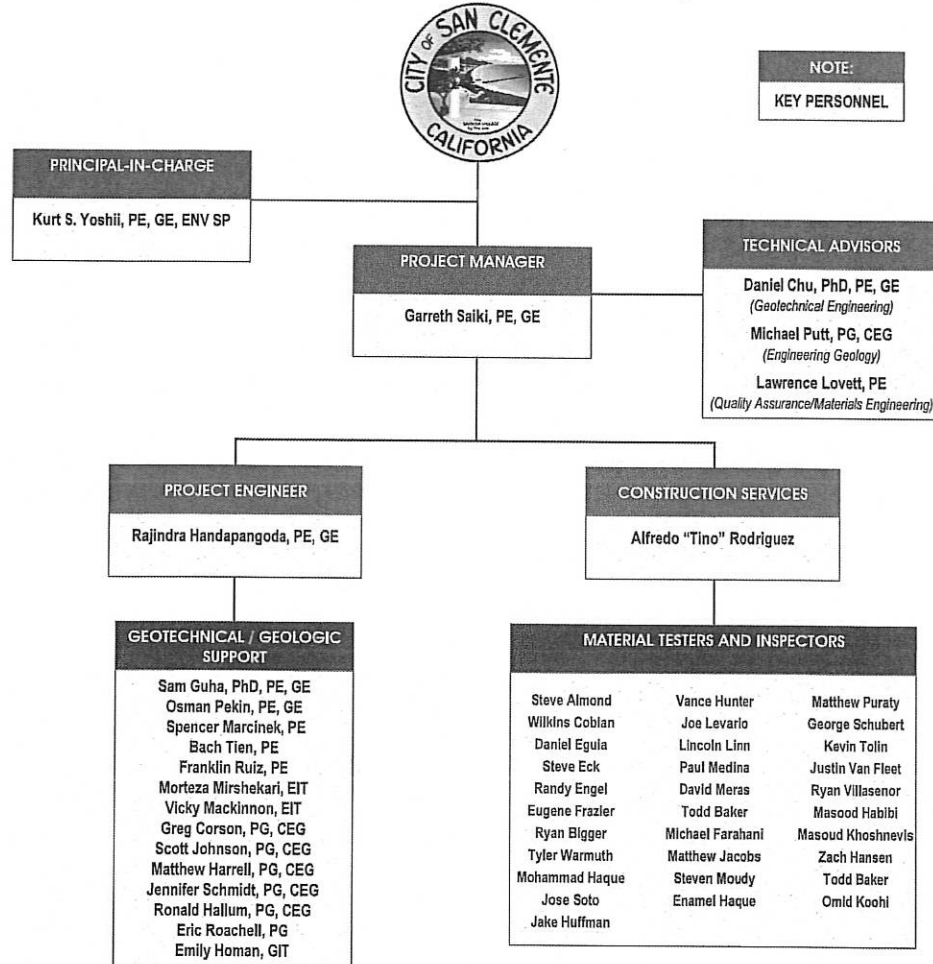
inspectors and distributed our reports to the approved distribution list. We will provide our services to meet the City needs. Often we will attend pre-construction meetings with the contractor and obtain from the City approved distribution list for our materials testing and inspection reports as well as our laboratory conformance testing results. We will also provide the county representatives with our personnel's mobile telephone numbers and e-mail addresses for communication during the project. We will also establish the communication lines between the City Project Manager, City Inspector, and the contractors' and sub-contractors' representatives.

5. **Utilize Our Project Controls** – Ninyo & Moore utilizes an internal project control system that includes budget, schedule, and document review and control. Our project manager will utilize our in-house system to keep the City Project Manager informed about the status of our services during both our geotechnical investigation phase and for our materials testing and inspection services during construction. We include monthly progress reports indicating the amount billed to date along with a comparison to the overall task order budget and the overall construction schedule. Our quality control includes review of our laboratory conformance test results by a California licensed engineer and geotechnical analysis review by a California licensed Geotechnical Engineer.
6. **Perform Field and Laboratory Testing** – When construction commences, we will provide the necessary personnel and equipment to inspect and test the construction materials quality and contractor's construction methods in order to document conformance to the project plans and specifications. We will also sample the construction materials as required and perform laboratory conformance tests as specified. The results of our inspections and tests will be forwarded to the City representatives at the end of each working day. Immediate notification will be provided via phone, e-mail, and/or fax if we find non-conformance in materials or workmanship. Our local laboratory facilities will perform 100 percent of the soils and materials laboratory work for this contract. They are certified in compliance with ASTM E-329 and are approved/accredited by the City of Los Angeles, Division of the State Architect (DSA), Metropolitan Transportation Authority (Metro), Caltrans, and the Cement and Concrete Reference Laboratory (CCRL).
7. **Quality Assurance Review** – We understand the importance of reliability of our inspections and test results. Therefore, we have a Quality Assurance Plan in place that provides written procedures for our services. Our Quality Assurance Plan is overseen by a California licensed Quality Engineer and include review of our training procedures, as well as participation in third party review and inspection of our facilities. All of our laboratory conformance tests are reviewed by a California licensed engineer prior to submittal.
8. **Reports** – Written reports are required for project documentation. We will submit our written reports, including both our geotechnical investigation report and our written reports during construction, as established in the communications structure for the project that was determined during the project initiation stage. Passing tests and inspections will be filed in accordance with the document control system. Non-conforming reports will be maintained in a non-conformance log that will be maintained by our office. Non-conformance areas will need to be remedied in accordance with the project requirements. When non-conforming materials or workmanship are remedied, we will document the acceptance in the non-conformance log for project close-out purposes.
9. **Project Close-Out** – The final step in our approach is the closing out of the project and providing the project documentation, as it relates to materials testing and inspection, to City.

IV. Work Plan

Additional services that Ninyo & Moore could provide that are not explicitly listed in the Scope of Work, but could be utilized in the completion of various City task orders include, but are not limited to, geophysical methods that may be used to identify existing utilities, thickness of pavements, or embedded reinforcing elements in concrete structures; deflection testing or similar non-destructive testing to evaluate the adequacy of pavement; Geographic Information System (GIS)-based mapping tools to locate and identify existing surficial features such as slumps, erosion, or damaged drainage facilities in order to develop risk-based mapping of City-owned slopes; and hazardous material evaluation of potentially contaminated materials during construction.

V. Project Organization and Staffing



Ninyo & Moore recognizes that the success of a project will depend on staff capabilities and effective project management. Given that necessary technical talent and physical resources are committed to the project, good management becomes the most important item for successful completion of the proposed work. In addition, familiarity with our client's needs and requirements are critical in successfully performing our services to meet or exceed our client's expectations. In order to effectively accomplish our goal of successful completion of our services to our client's satisfaction, our project team will be led by our Principal-in-Charge, Mr. Kurt Yoshii, and coordinated by our Project Manager, Mr. Garreth Saiki. Our proposed key personnel are presented below. Complete resumes are provided in Appendix A.

V. Project Organization and Staffing

Principal-in-Charge (Availability: 30%)

Mr. Kurt Yoshii, P.E., G.E., Principal Engineer, will serve as the Principal-in-Charge. Mr. Yoshii will be the primary point of contact for the City for contractual issues and will oversee the work of our staff throughout the duration of the contract. Mr. Yoshii holds a Bachelor's Degree in civil engineering from the University of California at Berkeley. He is both a registered Civil Engineer and a licensed Geotechnical Engineer in California and has over 27 years of experience in the various aspects of geotechnical engineering including design, construction, and forensic evaluations for residential, commercial and public works projects.

Project Manager (Availability: 50%)

Mr. Garreth Saiki, P.E., G.E., Principal Engineer, will be the Project Manager for this contract and will be responsible for performing the task-order specific assignments. He will coordinate the day-to-day activities of our geotechnical engineering and field and laboratory staff for this contract. Mr. Saiki holds a Bachelor's degree in civil engineering Master's degree in business administration from the University of California at Davis. He has over 32 years of experience in geotechnical engineering.

Technical Advisor - Geotechnical Engineering (Availability: 35%)

Dr. Daniel Chu, Ph.D., P.E., G.E., Chief Geotechnical Engineer, will serve as Geotechnical Engineering Technical Advisor. Dr. Chu earned his Ph.D. in geotechnical engineering from the University of California at Los Angeles and is a licensed Civil and Geotechnical Engineer in California with over 37 years of experience. Mr. Chu will utilize his extensive knowledge and experience to analyze complex geotechnical engineering problems in order to develop solutions and recommendations.

Technical Advisor - Engineering Geology (Availability: 35%)

Mr. Michael Putt, PG, CEG, Principal Geologist, will serve as Geologic Technical Advisor. Mr. Putt directs geologic and geotechnical investigations, such as landslide and slope stability evaluations, fault and seismic hazard evaluations, groundwater studies, evaluation of grading plans, seismic refraction surveys, and provides technical direction to the geologic staff and in-house quality assurance review. Mr. Putt has over 22 years of engineering geology experience in southern California involving new construction for commercial, public works, and residential projects. He also has experience in forensic geologic investigations.

Technical Advisor- Quality Assurance and Materials Engineering (Availability: 35%)

Mr. Lawrence Lovett, PE, QE, will serve our Quality Assurance and Materials Engineering Technical Advisor. Mr. Lovett is a licensed Quality Engineer in California as well as a licensed Civil Engineer. Mr. Lovett holds a degree in Civil Engineering from the University of Maryland as well as a MBA from New York State University, and has over 50 years of experience in materials testing and inspection services. Mr. Lovett's role on this contract will be to oversee Ninyo & Moore's in-house Quality Assurance program for materials testing and inspection services.

Project Engineer (Availability: 55%)

Mr. Rajindra Handapangoda, PE, GE, will serve as Project Engineer for this contract. He will work closely with Mr. Saiki to provide the day-to-day coordination of our geotechnical field and laboratory program as well as the engineering calculations. Mr. Handapangoda hold a Bachelor's of Science Degree in Civil and Environmental Engineering from the University of California at Los Angeles, and a Master's Degree in Geotechnical & Earthquake Engineering from the University of California at Los Angeles. He is California-licensed Civil and Geotechnical Engineer with over 13 years of experience.

Construction Services Manager (Availability: 45%)

Mr. Alfredo "Tino" Rodriguez has more than 33 years of experience, the past 23 years at Ninyo & Moore, in providing specialty inspection, geotechnical and materials testing services. He oversees field services inspectors and technicians, and provides project management, structural concrete deputy inspection services, asphalt/concrete pavement and roadway inspection services on highway and street improvement projects, construction management services on public works projects, geotechnical observation and testing services for large mass grading projects.

Field Technicians and Inspectors (Availability: 100%)

Ninyo & Moore's field staff is highly experienced and qualified to provide testing and inspection services for an extensive range of project requirements. Ninyo & Moore's field and laboratory technicians maintain certifications with Caltrans, ACI, ICC, AWS-CWI, DSA, BNSF and OSHA, and possess a working knowledge of the requirements and procedures as specified by these agencies. Ninyo & Moore has over 40 available field and laboratory technicians located in our Irvine office that are extensively experienced at providing geotechnical soils and materials testing services and special inspectin for construction projects.

IX. Statement of Compliance

This Statement of Qualifications is in strict compliance with the Request for Qualifications and Draft Agreement and no exceptions to either are proposed.

X. Other Information

SUSTAINABILITY

Paperless Field Work – We are going to a paperless format for field and laboratory documents for construction quality control projects. This includes daily reports, density test data sheets, concrete data sheets, special inspection reports, field memoranda, plan documents, laboratory test results, and other forms of documentation. Using touchscreen computer laptops, documents utilized/prepared by field personnel are uploaded and downloaded to a dropbox-based system which is then viewable by our office personnel and project team members.

XI. Affirmative Action Policy Statement

It is the policy of Ninyo & Moore to employ, to advance in employment, and to otherwise treat all current employees and applicants for employment without regard to race, creed, color, religion, sex, ancestry, age, national origin, medical condition, sexual orientation, marital or domestic partner status, physical or mental handicap, or Vietnam Era and/or disabled veteran status.

Ninyo & Moore has established an Affirmative Action plan to promote the employment and advancement of members of those covered groups identified by statute and regulation, including minority persons, women, qualified handicapped individuals, Vietnam Era Veterans, and Disabled Veterans.

The policy of non-discrimination and Affirmative Action pursued by Ninyo & Moore applies to all levels of employment and to employment practices including but not limited to, recruitment, hire, promotion and upgrade, termination, pay and benefits, transfer, performance, layoff, rehire, training, utilization, and discipline, as well as to educational, social and recreational programs. Employment decisions are made on the basis of merit. The aforementioned activities shall become a part of the company's reporting and monitoring procedures.

Ninyo & Moore is committed to providing a work environment free of discrimination. In keeping with this commitment, the company maintains a strict policy prohibiting unlawful harassment, including sexual, racial, or religious harassment. This policy prohibits harassment in any form, including verbal, physical, and visual.

It is the responsibility of every member of the Ninyo & Moore management team to assure the effective implementation of Affirmative Action in all personnel practices.

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant shall diligently perform the Services to the City's satisfaction according to the timeframe requested by the City.

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(E) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery,

business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other

insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

EXHIBIT "D"
COMPENSATION

Compensation for the Services provided under this Agreement shall be on a time and materials basis at the hourly rates listed below for actual work performed at the City's request. Overtime, after hours and holiday or weekend work must be approved in writing by the City in advance or will be compensated at the regular hourly rate. Direct costs include laboratory fees as specified below are reimburseable. There are no other reimbursable expenses under this Agreement. Terms and conditions set forth in Consultant's Work Authorization and Agreement Form shall not conflict with this Agreement and in the event of a conflict, the terms of this Agreement shall control. Total compensation under this Agreement shall not exceed \$50,000.00. Additional work shall require approval in writing in advance by the City Council.

Schedule of Fees

Hourly Charges for Personnel

Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	\$ 195
Senior Engineer/Geologist/Environmental Scientist	\$ 190
Senior Project Engineer/Geologist/Environmental Scientist	\$ 185
Project Engineer/Geologist/Environmental Scientist	\$ 175
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 150
Staff Engineer/Geologist/Environmental Scientist	\$ 145
GIS Analyst	\$ 125
Technical Illustrator/CAD Operator	\$ 103

Field Staff

Certified Asbestos/Lead Technician	\$ 185
Field Operations Manager	\$ 125
Nondestructive Examination Technician (UT, MT, LP)	\$ 119
Supervisory Technician	\$ 115
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	\$ 109
Senior Technician	\$ 108
Technician	\$ 103

Administrative Staff

Information Specialist	\$ 85
Geotechnical/Environmental/Laboratory Assistant	\$ 80
Data Processor	\$ 75

Other Charges

Concrete Coring Equipment (includes technician)	\$ 190/hr
Anchor Load Test Equipment (includes technician)	\$ 190/hr
GPR Equipment	\$ 180/hr
Inclinometer	\$ 100/hr
Hand Auger Equipment	\$ 80/hr
Rebar Locator (Pachometer)	\$ 25/hr
Vapor Emission Kit	\$ 65/kit
Field Equipment	\$ 12/hr
X-Ray Fluorescence	\$ 70/hr
PID/FID	\$ 25/hr
Air Sampling Pump	\$ 10/hr
Field Vehicle	\$ 15/hr
Expert Witness Testimony	\$ 450/hr
Direct Expenses	Cost plus 15 %

Special equipment charges will be provided upon request.

Notes

For field and laboratory technicians and special inspectors, overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Field technician and special inspection hours are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours.

Invoices are payable upon receipt. A service charge of 1.5 percent per month may be charged on accounts not paid within 30 days.

Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

Schedule of Fees for Laboratory Testing

SOILS

Atterberg Limits, D 4318, CT 204	\$ 170
California Bearing Ratio (CBR), D 1883	\$ 550
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175
Consolidation, D 2435, CT 219	\$ 300
Consolidation, Hydro-Collapse only, D 2435	\$ 150
Consolidation - Time Rate, D 2435, CT 219	\$ 200
Direct Shear - Remolded, D 3080	\$ 350
Direct Shear - Undisturbed, D 3080	\$ 300
Durability Index, CT 229	\$ 175
Expansion Index, D 4829, IBC 18-3	\$ 190
Expansion Potential (Method A), D 4546	\$ 170
Geofabric Tensile and Elongation Test, D 4632	\$ 200
Hydraulic Conductivity, D 5084	\$ 350
Hydrometer Analysis, D 6913, 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	\$ 300
pH and Resistivity, CT 643	\$ 175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$ 220
Proctor Density with Rock Correction D 1557	\$ 340
R-value, D 2844, CT 301	\$ 375
Sand Equivalent, D 2419, CT 217	\$ 125
Sieve Analysis, D 6913, CT 202	\$ 145
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 100
Specific Gravity, D 854	\$ 125
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 925
Triaxial Shear, C.D, D 4767, T 297	\$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$ 350
Triaxial Shear, U.U., D 2850	\$ 250
Unconfined Compression, D 2166, T 208	\$ 180

MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$ 70
Brick Compression Test, C 67	\$ 55
Brick Efflorescence, C 67	\$ 55
Brick Modulus of Rupture, C 67	\$ 50
Brick Moisture as received, C 67	\$ 45
Brick Saturation Coefficient, C 67	\$ 60
Concrete Block Compression Test, 8x8x16, C 140	\$ 70
Concrete Block Conformance Package, C 90	\$ 500
Concrete Block Linear Shrinkage, C 426	\$ 200
Concrete Block Unit Weight and Absorption, C 140	\$ 70
Cores, Compression or Shear Bond, CA Code	\$ 70
Masonry Grout, 3x3x6 prism compression, C 39	\$ 45
Masonry Mortar, 2x2 cube compression, C 109	\$ 35
Masonry Prism, half size, compression, C 1019	\$ 120
Masonry Prism, Full size, compression, C 1019	\$ 200

REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	\$ 135
Fireproofing Density Test, UBC 7-6	\$ 90
Hardness Test, Rockwell, A 370	\$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 150
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 175
Pre-Stress Strand (7 wire), A 416	\$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80

CONCRETE

Compression Tests, 6x12 Cylinder, C 39	\$ 35
Concrete Mix Design Review, Job Spec	\$ 300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 850
Concrete Cores, Compression (excludes sampling), C 42	\$ 120
Drying Shrinkage, C 157	\$ 400
Flexural Test, C 78	\$ 85
Flexural Test, C 293	\$ 85
Flexural Test, CT 523	\$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 275
Lightweight Concrete Fill, Compression, C 495	\$ 80
Petrographic Analysis, C 856	\$ 2,000
Restrained Expansion of Shrinkage Compensation	\$ 450
Splitting Tensile Strength, C 496	\$ 100
3x6 Grout, (CLSM), C 39	\$ 55
2x2x2 Non-Shrink Grout, C 109	\$ 55

ASPHALT

Air Voids, T 269	\$ 85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$ 4,500
Asphalt Mix Design Review, Job Spec	\$ 180
Dust Proportioning, CT LP-4	\$ 85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$ 250
Extraction, % Asphalt without Gradation, D 2172, CT 382	\$ 150
Film Stripping, CT 302	\$ 120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$ 225
Marshall Stability, Flow and Unit Weight, T 245	\$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 150
Moisture Content, CT 370	\$ 95
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)	\$ 4,900
Superpave, Gyrotory Unit Wt., T 312	\$ 100
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	\$ 90
Voids filled with Asphalt, (VFA) CT LP-3	\$ 90
Wax Density, D 1188	\$ 140

AGGREGATES

Clay Lumps and Friable Particles, C 142	\$ 180
Cleanliness Value, CT 227	\$ 180
Crushed Particles, CT 205	\$ 175
Durability, Coarse or Fine, CT 229	\$ 205
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	\$ 90
Organic Impurities, C 40	\$ 90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 475
Sand Equivalent, T 176, CT 217	\$ 125
Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 145
Sodium Sulfate Soundness, C 88	\$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 115
Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 175

ROOFING

Roofing Tile Absorption, (set of 5), C 67	\$ 250
Roofing Tile Strength Test, (set of 5), C 67	\$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier Travelers Property Casualty Company of America

Policy Number UB6P428399

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: February 9, 20 24

Avram Ninyo dba Ninyo & Moore Geotechnical & Environmental Science
Consultants ("CONSULTANT")

Avram Ninyo

Avram Ninyo

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Address