

PROFESSIONAL SERVICES AGREEMENT
SOUTHWEST CORNER OF 91ST AND MARYLAND AVENUES (SITE)

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Ninyo & Moore, Geotechnical Consultants, Inc., a California Corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 2 day of February, 2016 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. **Key Personnel; Other Consultants and Subcontractors.**

- 1.1 **Professional Services.** Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 **Project Team.**
 - a. **Project Manager.**
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. **Project Team.**
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. **Discharge, Reassign, Replacement.**
 - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
 - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

(3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. **Subcontractors.**

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
 - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.**

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 **Coordination; Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with

any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. **Ownership.** Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. **Delivery.** Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. **City Use.**
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

- 4.1 **Compensation.** Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$49,137.00 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 **Allowances.** An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
- b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
- c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
 - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 **For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 **For Cause.** City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. **Professional Liability.** Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of **\$1,000,000** for each claim and a **\$2,000,000** annual aggregate limit.
- d. **Worker's Compensation:** Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

- 8.2 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:
- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
 - b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.
- 8.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.
- 8.4 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).
- 8.5 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.
- Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.
- 8.6 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 8.7 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.
9. **Immigration Law Compliance.**
- 9.1 Consultant, and on behalf of any Subconsultant or Subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to

their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

- 9.2 Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or Subcontractor employee who performs work under this Agreement to ensure that the Consultant, Subconsultant or any Subcontractor is compliant with the warranty under this section.
- 9.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this section. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant or Subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Consultant's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Notices.

- 10.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Michelle Fowler, PE
Ninyo & Moore, Geotechnical Consultants, Inc.

3202 East Harbour Drive
Phoenix, Arizona 85034

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o City Engineer
Engineering Department
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

11. Financing Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

12. Entire Agreement; Survival; Counterparts; Signatures.

12.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

12.2 Interpretation.

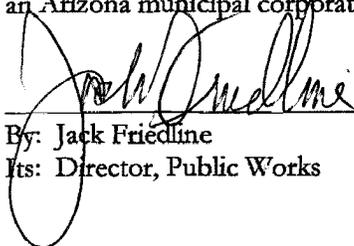
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

- 12.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 12.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 12.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 12.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 12.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
13. **Term.** The term of this Agreement commences upon the Effective Date and continues for a one year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional one year, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with Exhibit E. The final determination will be made by the City.
15. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- | | |
|-----------|--------------------|
| Exhibit A | Project |
| Exhibit B | Scope of Work |
| Exhibit C | Schedule |
| Exhibit D | Compensation |
| Exhibit E | Dispute Resolution |

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation



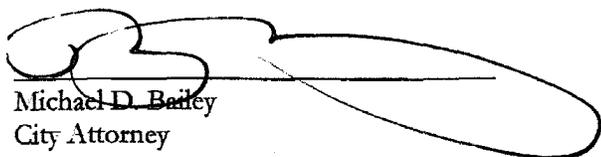
By: Jack Friedline
Its: Director, Public Works

ATTEST:



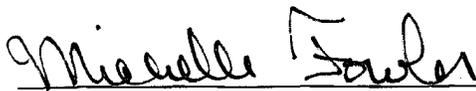
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

Ninyo & Moore, Geotechnical Consultants, Inc.,
a California corporation



By: Michelle Fowler
Its: Principal Engineer

EXHIBIT A

Professional Services Agreement

PROJECT

Ninyo & Moore will perform an environmental and geotechnical evaluation of the property located at the southwest corner of Maryland and 91st Avenues in Glendale, Arizona to evaluate the property for redevelopment as a parking lot.

EXHIBIT B

SCOPE OF WORK

SOUTHWEST CORNER OF 91ST AND MARYLAND AVENUES (SITE)

1. Introduction

Ninyo & Moore was retained by the City of Glendale to perform a Phase I Environmental Site Assessment (ESA) of two properties which included an approximately 961,819-square-foot lot located at the southwest corner of Maryland and 91st Avenues and addressed as 6252 North 91st Avenue in Glendale, Arizona (Site). The results of the Phase I ESA were summarized in the November 4, 2015 Ninyo & Moore report, titled Phase I Agricultural Properties, Southwest Corner of 91st Avenue and Bethany Home Road, Glendale, Arizona (Ninyo & Moore Project No. 604944001).

The Site is comprised of Maricopa County Assessor's Office Parcel Numbers (APNs) 102-01-002K and 102-01-002N and is currently a combination of agricultural crop land, two vacant houses, a former milking parlor, concrete-lined irrigation canals, equipment storage areas, and a storage building. As detailed in the Phase I ESA report, Ninyo & Moore identified the following recognized environmental conditions (RECs) at the Site:

- Two diesel fuel above ground storage tanks (ASTs) were located north of the storage building at the Site. Containers of lubricants and oil were observed underneath the diesel fuel ASTs. Dark, oily stained soil was observed in the vicinity of these containers and was considered a possible indicator of leaks or spills from these containers. The dark, oily staining of the soil observed underneath the diesel fuel ASTs is probably a result of spills or leaks of lubricants and oils. In addition, it is possible drips associated with the diesel fuel ASTs could have occurred. The diesel fuel ASTs and oil and lubricant containers and the associated stained soil is considered a REC for the Site.
- Northwest of the diesel fuel ASTs was a dark, oily stained area with a diameter of approximately 6 feet. Based on the location of the stain (near the fuel ASTs and storage area for motor oils and lubricants), the size of the stain, and field observations, Ninyo & Moore concluded this stain is a REC for the Site.
- Routine equipment maintenance, including oil changes, had been performed in the area of the storage building. It is Ninyo & Moore's experience that leaks and spills of petroleum products and hazardous substances can occur during maintenance activities; therefore, Ninyo & Moore considers the maintenance of equipment in the area of the storage building a REC.
- A diesel fuel underground tank had reportedly been located in the northeast corner of the Site. The size of the tank was unknown. No soil samples had been collected after the removal of the underground fuel tank to evaluate if the tank had leaked. Because no assessment has been performed to confirm the former underground tank did not leak and impact the subsurface, the former underground fuel tank is considered a REC.

While not considered RECs, additional issues were identified for the Site:

- Concrete-lined irrigation canals are located on the Site. It is possible these canals would be classified as waters of the United States as defined in the Clean Water Act.
- Two houses, a storage building, a milking parlor, and other support buildings are present at the Site. Asbestos-containing materials (ACMs) and/or lead-based paint (LBP) may be present in one or more of the buildings. Hazardous materials such as mercury-containing switches, fluorescent lights, fluorescent light ballasts, batteries, and containers of petroleum products and hazardous substances such as paints, motor oil, and the herbicide Round-Up may still be present at the Site.
- Two septic tanks, associated with the residences on the Site, were present at the Site. If no longer used, a septic tank should be abandoned in accordance with Maricopa County protocol.
- It appeared two groundwater wells were located in the northeast area of the Site, near the northeast residence and the milking parlor.
- Crops had been grown on the Site since at least the 1940s. Commercial pesticides and herbicides have likely been applied to the Site. Residual concentrations of pesticides and herbicides and/or their breakdown derivatives may be present in the soil at the Site.
- Historical records indicated up to three ensilage pits had been located on the Site, two west of the storage building and one west of the southeastern residence. According to the Site owner, the ensilage pits were backfilled with soil and concrete rubble.

Ninyo & Moore understands the City of Glendale has acquired the Site and plans to demolish the Site structures and convert the Site to a parking lot. The City of Glendale requested Ninyo & Moore prepare this proposal to perform the following tasks:

- Evaluate the RECs identified at the Site to assess if additional investigation and/or remediation are required for one or more of the RECs.
- Evaluate if the concrete-lined irrigation canals could be considered waters of the United States and if additional work needs to be performed to abandon the canals.
- Permanently remove from service the two septic tanks at the Site.
- Evaluate the Site buildings for ACMs, LBP, and hazardous materials which may need to be mitigated prior to demolition of the buildings and, if necessary, oversee the abatement of ACMs, LBPs, and hazardous materials.
- Obtain a video of each Site groundwater well to evaluate the construction and physical condition of each well and abandon each well in accordance with Arizona Department of Water Resources (ADWR) protocol.
- Perform soil sampling of soil in the crop land area of the Site to evaluate the concentrations of chlorinated pesticides and herbicides, if any, in the top six inches of soil.
- Evaluate the vertical extent of debris in the former ensilage pits.

- Perform a geotechnical investigation of the Site to identify additional work which may need to be performed at the Site prior to its conversion to a parking lot.

Task A - Evaluation of RECs

1. Pre-Field Activities

Ninyo & Moore will prepare a project and Site-specific health and safety plan (HASP) for field activities, schedule subcontractors, and coordinate utility locating with Arizona 811 (formerly known as Arizona Blue Stake, Inc.). A private utility locator will be contracted to screen the proposed boring locations for underground private utility lines before beginning field activities at the Site.

2. Sample Locations

a. Staining Around Diesel Fuel ASTs

Two 5-feet below the ground surface (bgs) test borings will be installed in the stained area around the ASTs. Test boring locations will be biased toward the area of heaviest staining and/or low lying areas where liquids would pool. Soil samples will be collected from each test boring at 0.5 feet, 2.5 feet, and 5 feet bgs.

b. Staining West of Diesel Fuel ASTs

One 5-feet bgs test boring will be installed in the approximate center of this stained area. Soil samples will be collected from this test boring at 0.5 feet, 2.5 feet, and 5 feet bgs.

c. Storage Building/Maintenance Area

Ninyo & Moore will oversee the installation of five 5-feet bgs test borings around the storage building. These test boring locations, like the test borings discussed in Section 2.2.1, will be biased toward the area of heaviest staining and/or low lying areas where liquids would pool. Soil samples will be collected from each test boring at 0.5 feet, 2.5 feet, and 5 feet bgs.

d. Former Diesel Fuel Underground Tank

The previous Site owner had indicated this former underground tank had been located near the carport for the northeast residence. Ninyo & Moore will review again historical aerial photographs of the Site to identify the most probable location of the former fuel tank.

Once the location of the fuel tank has been approximated, Ninyo & Moore will oversee the installation of two 20-feet bgs test borings in the estimated area of the former tank. Soil samples will be collected from each test boring at 10 feet, 15 feet, and 20 feet bgs.

3. Sampling Activities

A hollow-stem auger (HSA) rig will be used to install these 10 test borings. Soil samples will be collected using a California modified split-spoon sampler. At each selected sample depth, the sampler will be attached to a rod and will be extended down the boring and driven approximately 18 inches into the relatively undisturbed soil below the drill head. The sampler will then be extracted and opened. The soil in the sampler will be transferred into laboratory-certified clean glassware supplied by the laboratory.

To comply with United States Environmental Protection Agency (USEPA) Method 5035 for volatile organic compound (VOC) analysis, approximately 5 grams of soil will be removed from the sampler and placed in a 40-milliliter (ml) vial containing approximately 5 ml of the preservative, methanol. The vial will then be capped with a Teflon-lined septum. The remaining soil will be transferred to two laboratory supplied, certified clean, 4-ounce glass jars. Once full, each jar will be sealed with a Teflon-lined lid.

The jars and vials containing the samples will be labeled with unique sample numbers. These identification numbers, sample date and time, selected analytical parameters, and the name of the sampling personnel will be recorded on a chain-of-custody record. The chain-of-custody record will accompany the samples from sample collection until the samples are transferred to the analytical laboratory representative. After the sample containers are labeled with the sample number, the sample containers will be stored in a cooler chilled with wet ice.

Soil cuttings and soil samples will be assessed for the potential presence of chemicals of concern such as staining or a distinctive chemical odor. The remainder of the soil in the sampler will be screened with a calibrated photo ionization detector (PID), flame ionization detector (FID), or other suitable organic vapor analyzer (OVA). These types of qualitative meters are capable of detecting the presence of certain VOCs common to gasoline and cleaning solvents. Field OVA measurements and a corresponding location identifier will be recorded in the field notes. The soils also will be visually classified and logged using the Unified Soil Classification System. Should conditions be encountered that warrant additional evaluation such as a distinct chemical odor or soil staining, the client will be contacted and updated on the project findings.

Only clean drill string will be used to install each test boring. Used disposable sample equipment and personal protective equipment will be placed inside a plastic bag and the bag sealed. This bag will then be placed inside another plastic bag and this bag also sealed. The double-bagged waste will be disposed as municipal waste. At the completion of boring activities, each test boring will be backfilled with the drill cuttings. Excess drill cuttings will be spread on unpaved areas of the Site.

Non-disposable sampling equipment will be cleaned in an Alconox-potable water solution, rinsed with potable water, then given a final rinse in either distilled or deionized water and allowed to air dry. Equipment will be cleaned prior to obtaining each soil sample to limit the possibility of cross-contamination between samples. Spent wash waters used to clean sampling equipment, expected to be less than five gallons total, will be poured onto the Site and allowed to evaporate. Care will be taken not to allow this water to run off the Site.

In addition to collecting environmental samples from the two test borings installed in the vicinity of the former underground diesel fuel tanks, Ninyo & Moore will also collect samples from this test boring for geotechnical assessment using protocol outlined in Section 10.

4. Chemical Analysis

a. Staining Around Diesel Fuel ASTs

Initially, the 0.5 feet bgs soil sample from each test boring will be analyzed for the following parameters:

- VOCs using USEPA Test Method 8260B plus tentatively identified compounds (TIC) list;
- polynuclear aromatic hydrocarbons (PAHs) using USEPA Method 8270-SIM; and,

- eight Resource Conservation and Recovery Act (RCRA) metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and

These analytical parameters were selected as the most common chemicals of concern associated with diesel fuel, gasoline, and new and used motor oil, the most likely products stored in the area of the staining.

If a VOC or PAH is detected above its laboratory reporting limit (LRL) or a RCRA metal is detected at a concentration above its typical background concentration in soil in Arizona in a 0.5 feet bgs soil sample, the corresponding 2.5 feet bgs soil sample from that test boring will be analyzed for that chemical of concern. This protocol will be followed to evaluate if a 5 feet bgs sample from the test boring will need to be analyzed for one or more chemicals of concern.

5. Staining West of Diesel Fuel AST

The 0.5 feet bgs soil sample from this test boring will be analyzed for the same parameters listed in Section 2.4.1. These analytical parameters were selected as the most probable chemicals of concern which could have caused the staining.

Ninyo & Moore will use the same protocol outlined in Section 2.4.1 to determine if the 2.5 feet and/or the 5 feet bgs soil samples from this test boring needs to be analyzed for one or more chemicals of concern.

6. Storage Building/Maintenance Area

Each of the 0.5 feet bgs soil samples will be analyzed for the following parameters:

- VOCs using USEPA Test Method 8260B plus the TIC list;
- PAHs using USEPA Method 8270-SIM;
- eight RCRA metals using USEPA Methods 6010B and 7471A;
- organochlorine pesticides using USEPA Method 8081A; and,
- chlorinated herbicides using USEPA Method 8151A

These analytical parameters were selected as the most common chemicals of concern associated with fuels, vehicle maintenance chemicals, and pesticides and herbicides which may have been stored and/or used in the vicinity of this building.

If a VOC, PAH, organochlorine pesticides, or chlorinated herbicide is detected above its LRL or a RCRA metal is detected at a concentration above its typical background concentration in soil in Arizona in a 0.5 feet bgs soil sample, the corresponding 2.5 feet bgs soil sample from that test boring will be analyzed for that chemical of concern. This protocol will be followed to evaluate if a 5 feet bgs sample from a test boring will need to be analyzed for one or more chemicals of concern.

7. Former Diesel Fuel Underground Tank

Initially, the 10 feet and 15 feet bgs soil sample from each of the two test borings will be analyzed for: VOCs using USEPA Method 8260B and PAHs using USEPA Method 8270-SIM. These analyses are in general accordance with the Arizona Department of Environmental Quality (ADEQ) UST System Permanent Closure Guidance Document, revised June 2015 for diesel fuel containing tanks.

If a VOC or PAH is detected above its LRL in a 15 feet bgs soil sample from a test boring, the corresponding 20 feet bgs soil sample from that test boring will be analyzed for that chemical of concern.

8. Quality Assurance/Quality Control (QA/QC)

For QA/QC purposes, one duplicate soil sample will be collected for every 10 soil samples collected. For Task A, Ninyo & Moore will be collecting 30 soil samples; therefore, 3 duplicate soil samples will be obtained. The duplicate soil samples will be collected from either the 0.5 feet bgs sample interval or 10 feet bgs (for samples collected from the former diesel fuel underground tank). Ninyo & Moore proposes to obtain one duplicate sample from the diesel fuel AST samples, one duplicate sample from the storage building/maintenance area samples, and one duplicate sample from the diesel fuel underground tank. The duplicate samples will be collected and managed using the same protocol outlined in Section 2.3. However, each duplicate soil sample will be labeled in such a manner the laboratory will not know which sample has been duplicated. Each duplicate soil sample will be analyzed for the same parameters as its corresponding soil sample.

9. Report Preparation

Upon receipt of the laboratory analytical results, Ninyo & Moore will complete and submit summary report that will include the following:

- Site maps, prepared to scale, depicting the locations of pertinent Site features, (i.e., sampling locations and Site buildings);
- Photographic documentation with a photo log identifying the date, time, and subject of each picture;
- Copy of the laboratory analytical report, including the chain-of-custody records and laboratory Quality Assurance/Quality Control information;
- A table summarizing the analytical results and comparing the analytical data to applicable Arizona Department of Environmental Quality (ADEQ) residential soil remediation levels (SRLs) and Groundwater Protection Levels (GPLs) and discussing the results of the QA/QC samples;
- A conclusion if one or more RECs have resulted in a significant environmental impact on the Site and recommendations for additional assessment, if any.

10. Assumptions

Ninyo & Moore has made the following assumptions to complete the scope of services outlined in Sections 2.1 through 2.4:

- The client will be responsible for providing access to the Site.
- The field work will be performed during normal working hours.
- A HSA rig will be able to drill to a depth of 20 feet bgs and samples can be successfully collected using a split-spoon sampler.
- Underground utilities will not need to be moved to access the sample locations.
- The Site can be accessed by a truck-mounted drill rig.

- The sample depths listed will be sufficient to assess the extent of impact, if any, from each area where the RECs were identified.
- Each of the RECs listed in Section 2.2 will be assessed.

Task B - Hazardous Materials Survey and Remediation

1. Survey

Ninyo & Moore will perform a survey of the Site to identify hazardous materials which may still be present at the Site such as mercury switches in thermostats, fluorescent lights and light ballasts, batteries, and chemical containers left by the previous occupants.

2. Remediation

A contractor will be hired by Ninyo & Moore to remove and properly dispose of the hazardous materials identified at the Site. For the purposes of this proposal, Ninyo & Moore estimated up to two 55-gallon drums of hazardous materials will be removed from the Site and properly disposed. Ninyo & Moore will oversee the contractor activities.

3. Report Preparation

Ninyo & Moore will complete and submit electronically a letter report that will include the following:

- Site maps, prepared to scale, depicting the locations of the hazardous materials;
- Photographic documentation showing the hazardous materials and their removal with a photo log identifying the date, time, and subject of each picture;
- A copy of disposal documents for the drums of waste generated.

4. Assumptions

Ninyo & Moore has made the following assumptions to complete the scope of services outlined in Sections 5.1 through 5.3:

- The client will be responsible for providing unrestricted access to the Site buildings.
- Some damage of building materials may occur during removal of thermostats and light fixtures.
- A maximum of two 55-gallon drums of hazardous materials will be removed from the Site and properly disposed.
- The field work will be performed during normal working hours.
- The City of Glendale will be required to sign waste manifests for the drums of waste to be disposed.

Task C - Sampling of fields for Pesticides and Herbicides

Based on the historical use of the Site as agricultural land, the City of Glendale has requested soil samples be collected and analyzed for organochlorine pesticides and chlorinated herbicides.

1. Sample Locations

Ninyo & Moore will collect a total of 10 discrete soil samples from the areas of the Site used to grow crops. Soil samples will be collected from 0.5 feet to 1 foot bgs. The soil samples will be placed randomly throughout the fields.

2. Sampling Activities

Ninyo & Moore will utilize hand sampling equipment such as a shovel or trowel to collect the 10 soil samples. At each sample location, once the selected sample depth is reached, a clean hand trowel or equivalent will be utilized to obtain soil located between 0.5 feet and 1 foot bgs and transfer it to a laboratory supplied, certified clean, 4-ounce glass jar. Once full, the jar will be sealed with a Teflon-lined lid.

The jars containing the samples will be labeled with unique a sample number. These identification numbers, sample date and time, selected analytical parameters, and the name of the sampling personnel will be recorded on a chain-of-custody record. The chain-of-custody record will accompany the samples from sample collection until the samples are transferred to the analytical laboratory representative. After the sample containers are labeled with the sample number, the sample containers will be stored in a cooler chilled with wet ice.

Used disposable sample equipment and personal protective equipment will be placed inside a plastic bag and the bag sealed. This bag will then be placed inside another plastic bag and this bag also sealed. The double-bagged waste will be disposed as municipal waste. At the completion of boring activities, each test boring will be backfilled with the drill cuttings.

Non-disposable sampling equipment will be cleaned in an Alconox-potable water solution, rinsed with potable water, then given a final rinse in either distilled or deionized water and allowed to air dry. Equipment will be cleaned prior to obtaining each soil sample to limit the possibility of cross-contamination between samples. Spent wash waters used to clean sampling equipment, expected to be less than five gallons total, will be poured onto the Site and allowed to evaporate. Care will be taken not to allow this water to run off the Site.

3. Chemical Analysis

Each of the soil samples will be analyzed for the following parameters:

- organochlorine pesticides using USEPA Method 8081A; and,
- chlorinated herbicides using USEPA Method 8151A

4. QA/QC Samples

For QA/QC purposes, Ninyo & Moore will collect one duplicate soil sample. The duplicate sample will be collected and managed using the same protocol outlined in Section 9.2. However, the duplicate soil sample will be labeled in such a manner the laboratory will not know which sample has been duplicated. The duplicate soil sample will be analyzed for organochlorine pesticides and chlorinated herbicides using USEPA Methods 8081A and 8151A, respectively.

5. Report Preparation

Upon receipt of the laboratory analytical results, Ninyo & Moore will complete and submit summary report that will include the following:

- Site maps, prepared to scale, depicting the locations of pertinent Site features, (i.e., sampling locations and Site buildings);

- Copy of the laboratory analytical report, including the chain-of-custody records and laboratory Quality Assurance/Quality Control information;
- A table summarizing the analytical results and comparing the analytical data to applicable ADEQ residential SRLs and GPLs;
- A conclusion if chlorinated pesticides and/or herbicides are present in the soil in the areas of the Site used to grow crops at concentrations requiring additional assessment and/or remediation.

6. Assumptions

Ninyo & Moore has made the following assumptions to complete the scope of services outlined in Sections 9.1 through 9.5:

- The client will be responsible for providing unrestricted access to the Site.
- Underground utilities will not need to be moved to access the sample locations.
- The Site can be accessed by a standard vehicle.
- The field work will be performed during normal working hours.

Task D - Geotechnical Site Survey

Ninyo & Moore proposes the following geotechnical scope of services for this project:

1. Field Activities

Ninyo & Moore will perform the following activities as part of the geotechnical field work:

- Review available published and in-house geotechnical reports, topographic information, soil surveys, geologic literature, and aerial photographs of the Site.
- Perform a geologic reconnaissance for the Site.
- Conduct a Site visit to select and mark out the proposed boring locations.
- Contact Arizona 811 to evaluate utility locations prior to drilling.
- Utilize geophysical survey equipment to evaluate potential underground utility conflicts below each geotechnical boring location.
- Perform a geotechnical exploration, which will include the installation of 13 geotechnical soil borings to depths between 5 feet and 20 feet bgs. Three of the borings will be located within the backfilled ensilage areas and 10 of the borings will be located in the existing field area. The borings will be advanced with a truck mounted drill rig using HSAs.
- Collect soil samples in the borings at 2.5- to 5.0-foot intervals using ASTM International (ASTM) D-1586 (standard penetration test [SPT] with split-barrel sampling of soils) and D 3550 (ring-lined barrel sampling of soils) for laboratory testing and analysis. The boreholes will be backfilled with soil spoils. Ninyo & Moore personnel will log the borings in general accordance with the Unified Soil Classification System (USCS) and ASTM D 2488 by observing cuttings and split-spoon samples. The ring samples will be trimmed in the field, wrapped in plastic bags, and placed in moisture-tight cylindrical plastic containers, while the SPT samples will be placed in re-sealable bags to help preserve their natural moisture. Bulk samples will also be placed in large plastic bags. The soil samples will be transported to a Ninyo & Moore laboratory for testing.

2. Laboratory Analysis

Ninyo & Moore will perform laboratory testing that will evaluate the Site soil characteristics for representative soil samples. The proposed laboratory tests will generally include: in-place moisture and density; plasticity index; gradation; consolidation (response to wetting); pH and resistivity; and sulfate and chloride content.

3. Report Preparation

Ninyo & Moore will prepare a geotechnical report to include logs of the exploratory borings and results of the laboratory testing. The report will include a cover letter sealed by a Professional Engineer licensed in the State of Arizona. The report will include the following:

- Site vicinity map and boring plan map;
- Description of work scope, laboratory, and field procedures;
- Encountered subsurface soil and groundwater conditions;
- General seismic characteristics in accordance with 2006 IBC;
- Geologic hazards, including the presence of surface earth fissures;
- Excavation characteristics of Site soils;
- Earthwork factors;
- Potential for re-use of Site soils;
- Subgrade preparation measures;
- Recommendations for special soil conditions such as expansive, collapsible, or highly compressible soils;
- New pavement sections for various traffic volumes and recommendations for pavement construction for parking lots, light truck traffic and heavy truck traffic;
- Recommendations relative to Site drainage; and,
- Discussion of soil corrosivity to steel and concrete.

4. Assumptions

Ninyo & Moore has made the following geotechnical assumptions in the preparation of this proposal:

- The field work will be performed during normal working hours.
- The Site is accessible to normal, two-wheel drive, truck-mounted drilling equipment, and Site access will be granted.
- The work can be accomplished using HSA operating at a normal rate of penetration.
- If auger refusal or groundwater is encountered, Ninyo & Moore will terminate the boring and notify the City of Glendale.
- Groundwater will not be encountered.
- The boreholes can be backfilled with the drilling spoils.
- The geophysical survey will not identify utilities at sample locations.

- The geotechnical survey can be completed within 4 working days.
- Some ground disturbance should be expected as a result of Ninyo & Moore's field work.
- No traffic control measures will be needed for this project.
- Ninyo & Moore will not be needed to obtain environmental clearance as a part of this project.

EXHIBIT C
Professional Services Agreement

SCHEDULE

The anticipated time of completion for Phase I of this project (Tasks A, B, C and D) is detailed in the following schedule:

| Description | Work Days (Estimated) | Total Number of Work Days (Estimated) |
|---|------------------------------|--|
| Schedule sub-contractors, prepare health and safety plan, coordinate utility locate, schedule field work for Task A, B, C and D | 5 | 5 |
| Field work for Tasks A, B, C and D | 5 | 10 |
| Analysis of soil samples for Tasks A, C, and D | 10 | 20 |
| Preparation of draft summary reports for Tasks A, B, C and D | 10 | 30 |
| City of Glendale to review reports (estimate only) and to make decision on proceeding with Task B | 5 | 35 |
| Finalize reports after receipt of comments from City of Glendale | 5 | 40 |
| Coordinate contractor to remove hazardous materials from Site (Task B) | 5 | 45 |
| Removal of hazardous materials | 1 | 46 |
| Preparation of draft letter report documenting removal and disposal of hazardous materials | 10 | 56 |
| City of Glendale to review letter report (estimate only) | 5 | 61 |
| Finalize letter report after receipt of comments from City of Glendale | 5 | 66 |

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT

COMPENSATION

SOUTHWEST CORNER OF 91ST AND MARYLAND AVENUES (SITE)

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rates plus allowable reimbursable expenses.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Ninyo & Moore for full completion of all work required by the Project during the entire term of the Project must not exceed \$49,137.00.

DETAILED PROJECT COMPENSATION

| Environmental and Geotechnical Assessment of the former Agricultural Property located at the Southwest Corner of 91st and Maryland Avenues | | |
|--|--------------------|--------------------|
| Fee Schedule | | |
| Task | Total Hours | Cost |
| A. Evaluation of RECs | 65.25 | \$19,516.00 |
| B. Hazardous Materials Survey and Remediation | 44 | \$7,165.00 |
| C. Sampling of Fields for Pesticides and Herbicides | 31.00 | \$5,548.00 |
| D. Geotechnical Site Survey | 104.00 | \$16,908.00 |
| Total: | | \$49,137.00 |

EXHIBIT E
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

- 1.1. Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2. Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3. Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4. Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1. Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2. Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.