

CONSULTANT AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #: 002732

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS

THIS AGREEMENT made and entered into at Menlo Park, California, this 23 day of July, 2017, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS, hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Environmental Compliance Services for Oak Grove Safe Routes to School and Green Infrastructure Project

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.

3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$28,200 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Justin I. C. Murphy
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
nmmelgar@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Kris M. Larson
Ninyo & Moore Geotechnical & Environmental Sciences Consultants
2020 Challenger Drive, Suite 103
Alameda, CA 94501
510-343-3000
klarson@ninyoandmoore.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK
It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.
18. COMPLIANCE WITH LAWS
It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.
19. BREACH OF AGREEMENT
<p>A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.</p> <p>B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.</p>
20. SEVERABILITY
The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.
21. CAPTIONS
The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.
22. LITIGATION OR ARBITRATION
In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.
23. RETENTION OF RECORDS
Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.
24. TERM OF AGREEMENT
This agreement shall remain in effect for the period of July 22, 2019 through December 31, 2019 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.


26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:



Signature

Kris M. Larson, P.G., QSD

Printed name

33-0269828

Tax ID#

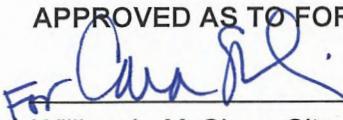
July 17, 2019

Date

Principal Geologist

Title

APPROVED AS TO FORM:

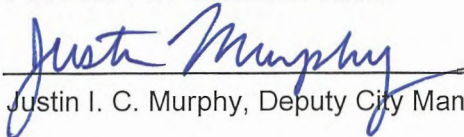


William L. McClure, City Attorney

7/23/19

Date

FOR CITY OF MENLO PARK:

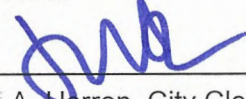


Justin I. C. Murphy, Deputy City Manager

7/23/19

Date

ATTEST:



Judi A. Herren, City Clerk

7/24/19

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services: Provide consultant services set forth in Exhibit A -1, attached hereto.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY shall pay FIRST PARTY an all-inclusive fee of \$28,200 as described in Exhibit "A," Scope of Services. All payments, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Deputy City Manager.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount;

Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.



July 11, 2019
Proposal No. 09OAK03-00859

Mr. Rene Punsalan, P.E.
Associate Civil Engineer
City of Menlo Park
701 Laurel St. Menlo Park, CA 94025

Subject: Proposal for Environmental Compliance Services
Oak Grove Bioretention Project
Menlo Park, California

Dear Mr. Punsalan:

Ninyo & Moore is pleased to submit this proposal for Environmental Consulting Services, including additional soil characterization, preparation of a Soil Management Plan (SMP) and Health and Safety Plan (HSP), Regulatory Agency Correspondence, Construction Oversight and Air Monitoring and preparation of a Remedial Action Completion Report (RACR) to the City of Menlo Park relating to the Oak Grove Bioretention Project. We understand that the project alignment is approximately 1,000 linear feet and is located between 600 feet south of Marcussen Drive and Rebecca Lane along Oak Grove Avenue, and that an approximately 300-foot area of soil on the north and south sides of Oak Grove Avenue where a proposed Bioretention basin will be installed has been impacted by elevated concentrations of lead and total dichlorodiphenyltrichloroethane (DDT).

SITE BACKGROUND

Four shallow soil samples were collected from Pacific State in February 2019 from between 0.5 feet below ground surface (bgs) and 1.5 feet bgs within the proposed bioretention basin. Elevated concentrations of total DDT were reported in the samples ranging from 76.25 micrograms per kilograms ($\mu\text{g}/\text{kg}$) to 1.13 milligrams per kilograms (mg/kg). Total DDT exceeding 1.0 mg/kg is classified as hazardous waste according to California Code of Regulation (CCR) Title 22 characterization of hazardous waste guidelines. Elevated concentrations of lead were also reported at between 99 mg/kg and 203 mg/kg from four samples collected between depths of 0.5 feet to 1.5 feet bgs. All four lead samples exceeded the screening criteria for potentially hazardous soils, so a Soluble Threshold Limit Concentration (STLC) Waste Extraction Test (WET) was conducted on three of the four samples (the fourth sample was already classified as

hazardous because DDT exceeded 1.0 mg/kg) and two of the samples exceeded the hazardous waste threshold of 5.0 milligrams per liter (mg/L). Based on this information we are recommending the scope of work discussed below, which includes additional soil classification, preparation of a SMP, regulatory correspondence, construction oversight monitoring, and preparation of a RACR.

SCOPE OF SERVICES

Task 1 – Additional Soil Classification

Additional soil classification will be conducted to identify the vertical delineation of the lead and DDT impacted soils. Under this Task, Ninyo & Moore will perform the following project tasks, including:

- Coordinating the field activities with the City;
- Preparing a site-specific Health and Safety Plan;
- Conducting a site visit to mark out the sampling locations;
- Performing Underground Service Alert (USA) notification as required by California law;
- Contracting with a private utility contractor;
- Coordinating with the California-certified analytical laboratory;
- Procuring the field sampling supplies; and
- Providing project management services.

Ninyo & Moore will mobilize to the site and set up traffic controls prior to commencing field activities. Soil samples will be collected following standard environmental handling and management procedures which will include coring the surface hardscape material where needed. Ninyo & Moore will collect four samples in the proposed bioretention area, and two soil samples from the right turn pocket area approximately 400 feet south of Marcussen Drive. Soil samples will be collected from between 2- and 3-foot bgs at each location using hand augers. The soil samples will be placed in pre-cleaned 16-ounce jars supplied by the analytical laboratory, and stored in a cooler with ice prior to being transported via courier with completed chain-of-custody documentation to a state-certified analytical laboratory. Sampling equipment will be decontaminated between boring locations, and the sample locations will be backfilled with soil cuttings. Where hardscape is present, the surface will be capped with the appropriate hardscape material to match the existing grade.

The samples collected from the proposed bioretention basin will be analyzed for lead using EPA method 6010B and organochlorine pesticides (OCPs) using EPA method 8081. The samples collected from the right turn pocket area will be analyzed for the following:

- Total Petroleum Hydrocarbons (TPH)-Gasoline/BTEX/MTBE (EPA Method 8015 mod/8260)
- TPH-Diesel/Motor Oil (EPA Method 8015)
- Volatile Organic Compounds (VOCs) (EPA Method 8260)
- Semi-Volatile Organic Compounds (SVOCs) (EPA Method 8270)
- Organochlorine Pesticides (EPA Method 8081) and Polychlorinated Biphenyls (PCBs) (EPA Method 8082)
- Title 22 Metals (EPA Methods 6010) and Soluble Threshold Limit Concentration (STLC) metals and Toxicity Characteristic Leaching Procedure (TCLP) (as warranted – 10x STLC and 20x TCLP)
- Asbestos (CARB Method 435).
- Hexavalent Chromium (EPA Method 7199)

Task 1 Cost: \$10,200

Task 2 - Soil Management Plan

Because three of the four soil samples collected in the proposed bioretention area were classified as hazardous waste, Ninyo & Moore recommends that a Soil Management Plan (SMP) be prepared to act as a guidance document for handling contaminated and hazardous soils during soil disturbance activities. The SMP will be utilized on site by consultants and contractors and will include, but will not be limited to, the following information:

- Program participant roles and responsibilities
- Physical setting
- Soil screening criteria
- Soil management objectives
- Remedial actions
- Notifications
- Health and Safety plans
- Soil excavation and monitoring

-
- Soil segregation
 - Stockpiling soil stockpile management
 - Soil testing
 - Risk management measures
 - Administrative controls
 - Dust monitoring
 - Storm-water management

The SMP will be submitted to the City and the San Mateo County Department of Environmental Health (DEH) for review and approval. Lead- and DDT-impacted soil remediation will commence pending SMP approval by the DEH.

Task 2 Cost: \$4,000

Task 3 - Regulatory Agency Correspondence

Due to the elevated and hazardous lead and OCP results in shallow soils that are above CCR Title 22 screening criteria, Ninyo & Moore recommends that the DEH be consulted regarding the hazardous materials and the need for remedial actions performed on site. Ninyo & Moore can assist the City in corresponding with the DEH. From previous experience with the DEH on similar projects, we don't anticipate that the DEH will require the City to enter into a Voluntary Cleanup Agreement.

Task 2 Cost: \$3,700

Task 4 (Optional) - Construction Oversight and Air Monitoring

Ninyo & Moore can conduct construction oversight during soil removal activities if requested by the City. Construction oversight will include assisting the contractor in segregating clean and contaminated or hazardous soils and air monitoring during soil disturbance activities. The air monitoring will be conducted in order to:

- Identify and monitor the air contaminants generated during the soil removal and decontamination activities to assign the appropriate personal protective equipment and safety systems specified for those activities.
- Provide feedback to site operations personnel regarding potential hazards from exposure to hazardous air contaminants generated through site activities.

-
- Identify and monitor air contaminants at points outside of the soil removal and decontamination exclusion zones. Air monitoring will be conducted during work activities to measure potential exposure of sensitive receptors to site chemical constituents, as a result of removal activities.
 - Ninyo & Moore will monitor dust levels within the exclusion zone and at the work area boundary nearest to downwind receptor locations. Because the site constituents of concern (lead and DDT) are transported by dust particulates, the remediation contractor will focus on the implementation of mitigation measures and real-time monitoring of airborne dust levels generated by removal activities.
 - Air monitoring will be performed during site activities in which impacted or potentially impacted materials are being disturbed or handled. Ninyo & Moore will staff the site with an air monitoring/health and safety professional whose responsibilities will include:
 - Monitoring total dust levels and airborne lead levels in the exclusion zone and other locations. The site air monitoring professional will have the authority to stop work in the event that on-site activities generate dust levels that exceed the site or community action levels included in the SMP. The air-monitoring professional will monitor on-site wind direction and speed to identify conditions that require cessation of work, for example, wind speeds high enough to result in visible dust emissions from the point-of-origin or crossing the property line, despite the application of dust mitigation measures.
 - Assuring that all real-time aerosol monitors and air samplers are properly calibrated and in good working condition. Real-time, data-logging aerosol monitors (such as personal data real-time aerosol monitors) will be used to measure total dust levels. Real-time information will be posted daily and discussed with site workers.
 - Coordinating general site safety activities including all daily hazard communication, safety practices and procedure briefings.
 - Overseeing personal decontamination practices.
 - General site safety leadership, support and recordkeeping.
 - Ninyo & Moore will monitor dust levels and airborne levels from one location upwind of excavation operations (as determined by wind direction meter) and two locations downwind of excavation operations. Actual locations will be determined in the field. Air monitoring will be performed over an approximate 8-hour period each day that soil excavation or grading activities are conducted. The air-monitoring professional will check the equipment every 30 minutes during operation. This frequency is subject to change based on site conditions and newly available data.

Task 4 Cost/Day: \$2,300

Task 5 – Remedial Action Completion Report

A RACR will be prepared upon completion of remediation activities and receipt of confirmation sample laboratory analyses. The Report will summarize field activities and any deviations from the SMP. Confirmation sample analytical results will be tabulated and shown on figures. The Report will include transportation manifests and disposal receipts, and certified analytical laboratory

reports in appendices. The Report will be submitted to the City and the DEH for review and approval.

Task 5 Cost: \$5,700

ASSUMPTIONS

The following conditions will apply to the performance of the scope of services described herein:

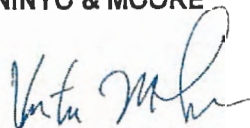
- No permit fees are included in this proposal.
- Once mobilized to the site, no delays or work stoppages beyond the control of Ninyo & Moore or its subcontractors will occur.

FEE

Ninyo & Moore is prepared to begin work on preparation of the environmental services described herein upon notice-to-proceed from the City. Services associated with the Tasks 1, 2, 3 and 5 will be conducted on a lump-sum basis for **\$23,600 (Twenty-Three Thousand Six Hundred Dollars)**. The construction oversight and air monitoring costs will also be conducted on a lump-sum basis for **\$2,300/day**. If this proposal is acceptable, please forward the appropriate contract documentation and we will commence the services discussed herein.

We trust that this proposal satisfies your current requirements and assure you that Ninyo & Moore will be responsive to your needs.

Sincerely,
NINYO & MOORE



Kris M. Larson, PG 8059
Principal Environmental Geologist



Duane W. Blamer, PG 6913
Manager, Environmental Sciences

KML/DWB/gvr

Distribution: (1) Addressee (via e-mail)

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.