

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

      N/19-7        
Series of 2019

**A RESOLUTION APPROVING A FOURTH AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH NINYO & MOORE**

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE NORTHGLENN URBAN RENEWAL AUTHORITY, THAT:**

Section 1. The Fourth Amendment to the Professional Services Agreement attached hereto as **Exhibit A** is hereby approved in the amount not to exceed Twenty-Four Thousand Dollars and zero cents (**\$24,000.00**), and the Chair is authorized to execute the same on behalf of the Authority.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Rosie Garner  
Chair

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Debbie Tuttle  
Executive Director

\_\_\_\_\_  
Jeff Parker  
Board Attorney

**FOURTH AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES**

THIS FOURTH AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this day \_\_\_\_\_ of \_\_\_\_\_, 2019, by and between the Northglenn Urban Renewal Authority, 11701 Community Center Drive, Northglenn, Colorado 80233-8061 (hereinafter referred to as "NURA") and Ninyo and Moore, 6001 S. Willow Drive, Suite 195, Greenwood Village, Colorado 80111 (hereinafter referred to as "Consultant").

1. The Scope of Services set forth in the Agreement for Professional Services between the parties dated May 24, 2012 is hereby amended by the addition of further services and additional costs not to exceed Twenty-Four Thousand Dollars and zero cents (\$24,000.00) as set forth in the attached **Attachment A**.

2. All other terms of the May 24, 2012 Agreement for Professional Services and the First, Second, and Third Amendments thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

**NORTHGLENN URBAN RENEWAL AUTHORITY**

By: \_\_\_\_\_  
Rosie Garner, Chair

ATTEST:

\_\_\_\_\_  
Debbie Tuttle Date  
NURA Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff H. Parker Date  
NURA Attorney

**CONSULTANT:** Ninyo & Moore

By: *Beth McDonald*

ATTEST:

Beth McDonald

Print Name

By: \_\_\_\_\_

Principal Engineer

4/5/2019

\_\_\_\_\_  
Print Name

Title

Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



April 1, 2019  
Proposal No. 11-00602

Ms. Debbie Tuttle  
Northglenn Urban Renewal Authority  
11701 Community Center Drive  
Northglenn, Colorado 80233

Subject: Proposal for a Feasibility Study  
Former Garland Shopping Center Site  
East of Washington Street on Garland Drive  
Northglenn, Colorado

Dear Ms. Tuttle:

We are pleased to present this proposal to the Northglenn Urban Renewal Authority (NURA) to provide environmental consulting services for the subject site. Services include a Feasibility Study of two potential remediation methods for a known tetrachloroethylene (PCE) plume.

## PROJECT BACKGROUND

The Former Garland Shopping Center site was located at 10755 Washington Street, Northglenn, Adams County, Colorado. The original site consisted of an approximately 5.2-acre parcel of developed land located northwest of the intersection of Garland Drive and Washington Street. The property is now developed with a Wal-Mart Neighborhood Grocery Store and is no longer considered part of the site.

The original site consisted of three separate properties, and by the end of 2012, NURA had purchased the three properties. In 2012 and early 2013, Ninyo & Moore completed a Phase I Environmental Site Assessment (ESA) and several Phase II ESAs at the site on behalf of NURA. During the Phase II ESAs, soil and groundwater samples were collected and analyzed for volatile organic compounds (VOCs). PCE in groundwater, most likely from an historical on-site dry cleaning facility located in the building formerly addressed as 10733 Washington Street, was reported at concentrations exceeding the CDPHE Water Standard. PCE was not detected in soil samples collected by Ninyo & Moore. The highest concentrations of PCE were detected in groundwater samples collected from wells MW-5 and MW-17. The locations of these monitoring wells are indicated on Figure 1.

Based on groundwater sampling results and the reported south-southeast direction of groundwater flow in the site area, the PCE-impacted groundwater plume appears to have moved downgradient and away from the Wal-Mart property.

Due to the historically low levels of PCE in the groundwater samples collected closest to the former dry cleaning facility (24.2 micrograms per liter [ $\mu\text{g/L}$ ] in SB-2), the CDPHE did not require remediation of the groundwater beneath the former dry cleaning facility, as this area is not considered to be the most severely impacted. The portion of the PCE-impacted groundwater plume beneath the southeast corner of the Wal-Mart property and in Garland Drive became the focus of remediation and monitoring.

In 2013 Ninyo & Moore prepared and submitted a VCUP Application to the CDPHE that included the Wal-Mart property and the impacted area beneath Garland Drive. The application proposed remediation of the PCE-impacted groundwater plume beneath the southeast corner of the original site and in Garland Drive by in-situ chemical oxidation (ISCO). The VCUP Application was approved by the CDPHE in a letter dated March 22, 2013.

Subsequently, Ninyo & Moore prepared and submitted a petition for No Action Determination (NAD) with regards to the PCE-impacted groundwater plume located beneath the former dry cleaning facility on the Wal-Mart property, and the NAD petition was approved in a letter dated April 29, 2013. Upon the executed sale of the property to Wal-Mart, the NAD was re-issued and released Wal-Mart of liability for the low-level PCE plume.

NURA and the City of Northglenn are the responsible party on record for the low-level PCE plume south and southeast of the Wal-Mart property beneath Garland Drive (current site). In the purchase agreement between Wal-Mart and NURA, Wal-Mart agreed to grant access to NURA and its assigns in order to meet groundwater monitoring requirements approved in the VCUP. In the approved VCUP application and the first addendum, it was asserted that groundwater monitoring would include regular monitoring of MW-5 (on Wal-Mart property), MW-10, and MW-17 (along the south side of Garland Avenue).

In May 2013 Ninyo & Moore implemented one round of ISCO subsurface injection on the southern edge of the Wal-Mart property and in Garland Drive. Groundwater monitoring was conducted to determine if the ISCO injections reduced PCE concentrations in the groundwater. Based on two semi-annual sampling events, PCE concentrations in groundwater did not decrease as anticipated after the first round of injections.

In order to maintain the groundwater monitoring wells agreed upon in the VCUP application, two wells were replaced. Monitoring well MW-5, located on the Wal-Mart property, was destroyed during the parking lot paving for the new building. Ninyo & Moore replaced the well in December 2014 with MW-5R, located approximately 10 feet west of the original well. Monitoring well MW-17, located in a parking lane on the south side of Garland Drive, was destroyed during re-paving activities. Ninyo & Moore replaced the well in May 2015 with MW-17R located approximately 5 feet east of the original well location.

As proposed in the VCUP Application, a second remedial action was conducted after the first was apparently ineffective. A second round of subsurface ISCO injection was implemented at the site from March 5 through March 9, 2015. Groundwater monitoring was conducted with sampling events in September 2015, March and September 2016, September 2017, and September and December 2018. Replacement monitoring well MW-5R was destroyed when a dumpster enclosure was constructed over it when a new Starbucks store was constructed on the southeast adjacent property to the Wal-Mart (on the former Miller property). A summary of groundwater laboratory analytical results is included as Table 1.

Data available from the Phase II ESAs conducted and the groundwater monitoring results from groundwater samples collected from MW-5 and MW-5R through September 2017 show a downward trend in reported PCE concentrations from 60.7 micrograms per liter ( $\mu\text{g/l}$ ) in September 2012 to 10  $\mu\text{g/l}$  in September 2017. PCE concentrations appeared to stabilize after the first round of ISCO injections and were consistently below the CDPHE water standard of 17  $\mu\text{g/l}$ .

A slightly different trend can be seen in groundwater samples collected from MW-10. PCE concentrations increased from 9.5  $\mu\text{g/l}$  to 57  $\mu\text{g/l}$  in groundwater sampled from MW-10 after the first round of ISCO injections. After the second round of ISCO injections in March 2015 PCE concentrations decreased and have been consistently below the CDPHE water standard of 17  $\mu\text{g/l}$  in the samples collected in September 2017 (10  $\mu\text{g/l}$ ), September 2018 (13  $\mu\text{g/l}$ ), and December 2018 (8.5  $\mu\text{g/l}$ ).

Groundwater sampled from MW-17 and MW-17R show increased PCE concentrations from 121  $\mu\text{g/l}$  to 210  $\mu\text{g/l}$  after the first round of ISCO injections. Concentration increased further after the second round of injections peaking at a concentration of 270  $\mu\text{g/l}$  in March 2016. An apparent decreasing trend occurred from September 2016 to September 2018 with a low concentration report of 73  $\mu\text{g/l}$  in September 2018. A sample collected in December 2018, however, showed a rebound in PCE concentration to 120  $\mu\text{g/l}$ .

Based on the available groundwater data it appears that the highest concentration of PCE currently is localized around MW-17R.

On February 1, 2019, Ms. Beth McDonald of Ninyo & Moore, and Ms. Debbie Tuttle of NURA met with Mr. Fonda Apostolopoulos of the CDPHE VCUP. Mr. Apostolopoulos agreed the PCE concentrations appear to be localized in the area around MW-17R along the south side of Garland Drive. He also stated that the site would require additional remediation to achieve closure under the VCUP. It was his suggestion to re-apply to the VCUP in order to be eligible for the 40% tax credit incentive the program now offers. The incentive program offers Brownfield tax credits in an amount equaling 40% of the total remediation costs for a project. The tax credits can be used toward federal tax debt or sold to off-set remediation costs. The Brownfields tax credit incentive has been available for VCUP projects since May 15, 2014.

Ninyo & Moore has prepared the following scope of services and associated pricing for your review. The proposed services include a Feasibility Study for two remediation options for the site.

## **SCOPE OF SERVICES**

### **Task 1 – Project Coordination**

- Project management including project planning and scheduling, communication, staffing, and invoicing.
- Communication and coordination with NURA staff throughout the project.
- Coordination of private property access, right-of-way permitting, and investigation-derived waste management and disposal.

### **Task 2 – Feasibility Study**

Ninyo & Moore proposes a Feasibility Study with the objective of comparing feasibility for two proposed remediation options (listed below). The two remediation methods considered for the purposes of remediating the remaining PCE plume in the groundwater at the Garland Site include Localized Bioremediation Injection and E-Redox Technology. The Feasibility Study is designed to further characterize/delineate the volume, phase (dissolved or undissolved), and location of the PCE in the subsurface at the site and assess specific groundwater conditions favorable for the two proposed remediation options.

- Ninyo & Moore would sub-contract a drilling company to install and develop up to four 2"-diameter groundwater monitoring wells. Locations of the proposed monitoring wells (FS-1, 2, 3, and 4) are shown on Figure 1 and listed below.

- FS-1: One 2”-diameter groundwater monitoring well to replace the former monitoring well MW-5R.
  - FS-2: One 2”-diameter groundwater monitoring well installed south of MW-10 and MW-17R north of Gethsemane Lutheran Church on the church’s lawn.
  - FS-3: One 2”-diameter groundwater monitoring well installed south and down-gradient of MW-17R on the lawn of the Gethsemane Lutheran Church.
  - FS-4: One 2”-diameter groundwater monitoring well to replace the former monitoring well MW-16 located on the Gethsemane Lutheran Church property on the southwest corner of Garland Drive and Washington Street.
- Coordinate with Gethsemane Lutheran Church to obtain permission to install a replacement monitoring well, MW-16R.
  - Submit a Notice-of-Intent form to the Colorado Department of Natural Resources for the four proposed 2”-diameter groundwater monitoring wells.
  - Proposed groundwater monitoring wells should be constructed in borings advanced using direct-push or hollow-stem auger technology to approximately 40 feet or to bedrock, whichever is shallower.
  - Groundwater monitoring wells will be constructed using 2”-diameter, schedule 40, polyvinyl chloride (PVC) factory slotted pipe. Each well will be developed using a surge block and removal of approximately 10 casing volumes of groundwater prior to sampling.
  - Groundwater samples will be collected from each well, FS-1, 2, 3, and 4, using a 1.5”-diameter dedicated bailer. Depth-to-groundwater will be measured and recorded prior to sampling.
  - Groundwater samples from each well will be field tested for the following parameters:
    - Oxidation-Reduction Potential (ORP)
    - Dissolved Oxygen (DO)
    - pH
    - Specific Conductance
    - Temperature
  - Submit the 4 groundwater samples to a Colorado and EPA-certified analytical laboratory to be analyzed for the following parameters:
    - Chloroethenes using EPA Method 8260
    - Electron Donors/Electron Acceptors/Chemistry
      - dissolved organic carbon
      - nitrate



- manganese
- ferric iron
- ferrous iron
- sulfate
- ethene
- carbon dioxide
- chloride
- alkalinity

Field and laboratory analytical results for each sample will be compared to favorable ranges for each proposed remediation option. Ninyo & Moore will consult with providers of remediation solutions to determine feasibility for effectiveness of each remedy based on groundwater chemistry. Remediation recommendations will be reported to the NURA Board and CDPHE for selection.

## ASSUMPTIONS

- NURA will assist in coordination of right-of-way permitting, and access permitting with the Gethesmane Lutheran Church and Wal-Mart properties.
- This scope of services does not include remediation costs or VCUP application preparation.

## SCHEDULE

Ninyo & Moore can initiate this project immediately upon receipt of notice-to-proceed. If this proposal meets your expectations, please provide written notice to proceed. Once approved, the field activities for the Feasibility Study can be conducted and results reported in approximately 4 weeks.

## FEE ESTIMATE

We propose to provide our services on a task-by-task basis accrued in accordance with the fees listed below.

Task	Fee
Project Management	\$4,500.00
Feasibility Study	\$19,500.00
<b>TOTAL:</b>	<b>\$24,000.00</b>

Any additional services not included in the aforementioned scope will be charged on a time-and-materials basis with prior approval by NURA.

To authorize our services, please sign and return the attached Work Authorization and Agreement.  
We look forward to working with you.

Respectfully submitted,  
**NINYO & MOORE**



**Beth McDonald, PE, PG**  
Principal Environmental Engineer

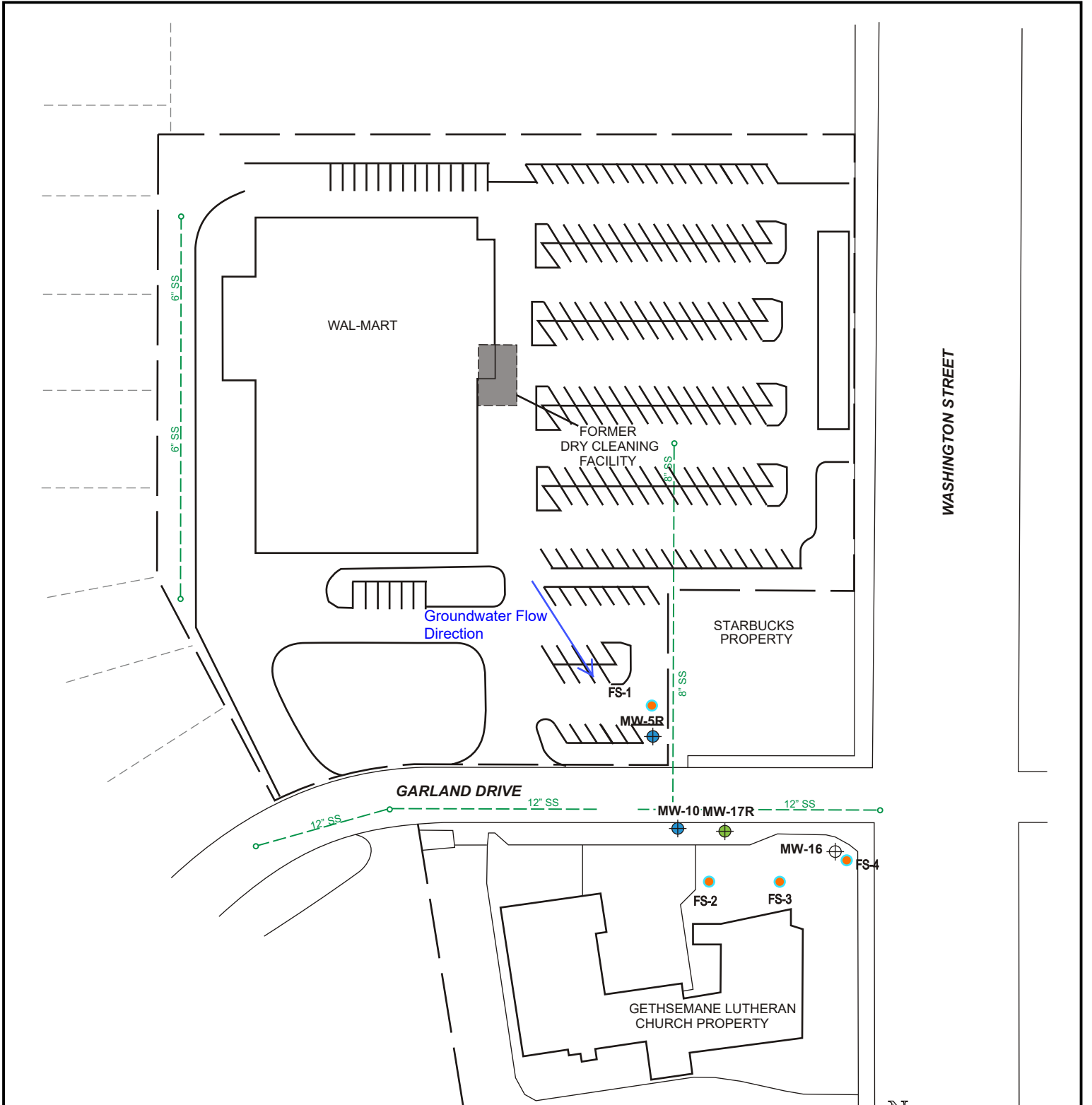


**Duane Blamer, PG**  
Principal Geologist

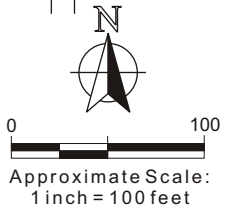
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Attachments: Table 1 – Summary of Groundwater Sample Analytical Results  
Figure 1 – Site Plan with Current and Proposed Well Locations  
Work Authorization and Agreement

Distribution: (1) Addressee (via email)



LEGEND	
	Proposed VCUP monitoring wells
	Monitoring wells installed by Ninyo & Moore
	Monitoring well was previously installed by Rule Engineering and is associated with the adjacent Miller Property (to be replaced by MW-16R)



Note: Dimensions, directions, and locations are approximate.

		<b>SITE PLAN WITH CURRENT AND PROPOSED WELL LOCATIONS</b>		<b>FIGURE</b>  <b>1</b>	
				GARLAND DRIVE WEST OF WASHINGTON STREET NORTHGLENN, COLORADO	
PROJECT NO: 500557004	DATE: 2/19				

**Table 1 - Summary of Groundwater Sample Analytical Results**

Sample ID:	Date Sampled	Chloroform	cis-1,2-Dichloroethene	Naphthalene	1,2,4-Trimethylbenzene	trans-1,2-Dichloroethene	Tetrachloroethene	Trichloroethylene
<b>Volatile Organic Compounds (VOCs) µg/L</b>								
MW-5 / MW-5R	9/26/2012	<0.38	<b>0.71J</b>	NA	NA	<0.36	<b>60.7</b>	<b>1.4J</b>
	5/17/2013	<b>0.68J</b>	<0.47	NA	NA	<0.36	<0.42	<0.41
	11/22/2013	<0.25	<0.30	NA	NA	<0.83	<b>19.2</b>	<0.25
	*12/3/2014*	<1.0	<1.0	<b>15.0</b>	<b>7.6</b>	NA	<1.0	<1.0
	*9/10/2015*	<1.0	<1.0	<2.0	<2.0	<1.0	<b>11</b>	<1.0
	*3/17/2016*	<1.0	<1.0	<2.0	<2.0	<1.0	<b>12</b>	<1.0
	*9/15/2016*	<2.0	<2.0	<5.0	<2.0	<2.0	<b>12</b>	<3.0
	*9/6/2017*	<2.0	<2.0	<5.0	<2.0	<2.0	<b>10</b>	<1.0
MW-10	11/8/2012	<0.38	<b>0.66J</b>	NA	NA	<0.36	<b>8.4</b>	<b>0.69J</b>
	5/17/2013	<0.38	<b>0.98</b>	NA	NA	<0.36	<b>9.5</b>	<b>0.62J</b>
	11/22/2013	<0.25	<0.30	NA	NA	<0.83	<0.28	<0.25
	12/3/2014	<1.0	<b>1.7</b>	<2.0	<2.0	NA	<b>57</b>	<b>2.4</b>
	12/23/2014	<1.0	<1.0	<2.0	<2.0	<1.0	<b>45</b>	<2.1
	9/10/2015	<1.0	<b>1.2</b>	<2.0	<2.0	<1.0	<b>26</b>	<b>2.4</b>
	3/17/2016	<1.0	<1.0	<2.0	<2.0	<1.0	<b>26</b>	<1.0
	9/15/2016	<2.0	<2.0	<5.0	<2.0	<2.0	<b>24</b>	<3.0
	9/6/2017	<2.0	<2.0	<5.0	<2.0	<2.0	<b>11</b>	<1.0
9/18/2018	<3.0	<1.0	<1.0	<1.0	<1.0	<b>13</b>	<1.0	
12/20/2018	<3.0	<1.0	<1.0	<1.0	<1.0	<b>8.5</b>	<1.0	
MW-17 / MW-17R	11/8/2012	<2.0	<1.0	NA	NA	<2.0	<b>121</b>	<2.0
	1/25/2013	<0.38	<b>2.0</b>	NA	NA	<b>0.64J</b>	<b>183</b>	<b>3.6</b>
	5/17/2013	<0.38	<b>2.0</b>	NA	NA	<b>0.40J</b>	<b>179</b>	<b>3.5</b>
	11/22/2013	<0.25	<0.30	NA	NA	<0.83	<0.28	<0.25
	12/3/2014	<1.0	<1.0	<2.0	<2.0	<1.0	<b>210</b>	<b>3.4</b>
	12/23/2014	<1.0	<1.0	<2.0	<2.0	<1.0	<b>210</b>	<b>3</b>
	*9/10/2015*	<1.0	<b>1.2</b>	<2.0	<2.0	<1.0	<b>250</b>	<b>3.4</b>
	*3/17/2016*	<1.0	<1.0	<2.0	<2.0	<1.0	<b>270</b>	<1.0
	*9/15/2016*	<2.0	<2.0	<5.0	<2.0	<2.0	<b>250</b>	<3.0
	*9/6/2017*	<2.0	<2.0	<5.0	<2.0	<2.0	<b>160</b>	<1.0
	*9/19/2018*	<3.0	<1.0	<1.0	<1.0	<1.0	<b>73</b>	<1.0
	*12/20/2018*	<3.0	<1.0	<1.0	<1.0	<1.0	<b>120</b>	<1.0
<b>CDPHE Groundwater Quality Standard</b>		<b>3.5</b>	<b>14</b>	<b>140</b>	<b>NE</b>	<b>140</b>	<b>17</b>	<b>5</b>

**Notes:**

µg/L = milligrams per liter.

\*\* Indicates that the sample was collected from a replacement well.

<x = below laboratory reporting limit.

J = estimated value above the method detection limit but below the reporting limit.

NA = not analyzed.

NE = not established.

**Bold** indicates concentration exceeds laboratory reporting limit.

**Bold & Shaded** indicates concentration exceeds one or more of the Regional Screening Levels (RSLs).

CDPHE Groundwater Quality Standard, December 2016.

VOCs were analyzed by EPA Method 8260B.

## WORK AUTHORIZATION AND AGREEMENT

Please Sign and Return One Copy to:

**NINYO & MOORE**  
6001 South Willow Drive, Suite 195  
Greenwood Village, Colorado 80111

PROPOSAL NO. **11-00602**

1. PROJECT ADDRESS: **East of Washington Street on Garland Drive  
Northglenn, Colorado**
2. PROJECT DESCRIPTION: **Feasibility Study  
Former Garland Shopping Center Site**
3. SCOPE OF STUDY: **Please refer to proposal dated April 1, 2019.**
4. FEE: **\$24,000**
5. PORTION OF FEE IN ADVANCE OF WORK: **None**
6. CLIENT: **Northglenn Urban Renewal Authority  
11701 Community Center Drive  
Northglenn, Colorado 80233**
7. STATEMENT TO BE SENT TO: **Client**

PHONE: **303-451-8326**

CONTACT: **Ms. Debbie Tuttle** PHONE: **303-451-8326**

## CONDITIONS OF AGREEMENT BETWEEN CLIENT AND NINYO & MOORE

This AGREEMENT is made by and between: NINYO & MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS, hereinafter referred to as CONSULTANT, and **Northglenn Urban Renewal Authority**, hereinafter referred to as CLIENT. This AGREEMENT between the parties consists of these TERMS, the attached Proposal identified as No. **11-00602** dated **April 1, 2019**, and any exhibits or attachments noted in the Proposal. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.

## STANDARD OF CARE

CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by CONSULTANT will be based solely on information available to CONSULTANT. CONSULTANT is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

Services performed by CONSULTANT under this AGREEMENT are expected by CLIENT to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the environmental sciences profession practicing contemporaneously under similar conditions in the locality of the project. It is important to recognize that even the most comprehensive scope of services may fail to detect environmental liabilities on a particular site. Therefore, CONSULTANT cannot act as an insurer and cannot "certify" that a site is free of environmental contamination. Under no circumstance is any warranty, express or implied, made in connection with the providing of environmental sciences consulting services.

## SITE ACCESS AND SITE CONDITIONS

CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for CONSULTANT to perform the work set forth in this agreement. CLIENT will notify any and all possessors of the project site that CLIENT has granted CONSULTANT free access to the site. Client will protect all property, inside and out, including all plants and landscaping. CONSULTANT will take reasonable precautions to reduce the potential for damage to the site, but it is understood by CLIENT that, in the normal course of work, some damage may occur and the correction of such damage or alteration is not part of this AGREEMENT unless so specified in the Proposal.

CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. CONSULTANT will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, CLIENT agrees to compensate CONSULTANT for any time spent or expenses incurred by CONSULTANT in defense of any such claim, with compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy.

## CONTAMINATED MATERIALS

In performing environmental, hydrologic, or hydrogeologic services, CONSULTANT may excavate or otherwise come in contact with hazardous materials. CLIENT represents that CLIENT has informed CONSULTANT of the presence of any known hazardous materials.

CLIENT recognizes that a project site containing hazardous materials may not perform as anticipated by CLIENT, even though CONSULTANT's services are performed with currently acceptable levels of care and skill. Further, CLIENT acknowledges that, while necessary for site exploration, commonly used exploration methods such as drilling borings and excavating trenches involve an inherent risk. For example, exploration on a project site containing contaminated materials may result in inducing cross-contamination and/or other negative effects.

Unanticipated hazardous materials may be encountered in an area where there is no reason to believe they could or should be present. CONSULTANT and CLIENT agree that the discovery of unanticipated hazardous materials may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CLIENT agrees to compensate CONSULTANT for any equipment decontamination or other costs arising out of the discovery of hazardous materials.

CONSULTANT agrees to notify CLIENT when hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold CONSULTANT harmless for any and all consequences of disclosures made by CONSULTANT which are required by governing law. In the event that the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of hazardous materials or suspected hazardous materials.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against CONSULTANT and, to the maximum extent permitted by law, agrees to defend, indemnify, and save CONSULTANT harmless from any claim, liability, and/or defense cost for injury or loss arising from CONSULTANT's discovery of hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of development projects and any cost associated with possible reduction of the property's value.

CLIENT will be solely responsible for the ultimate disposal of any materials secured by CONSULTANT which are found to be contaminated. Such materials include, but are not limited to, drilling mud, soil, groundwater, and other materials removed from excavations. Contaminated materials will be placed in suitable storage containers, labeled, and left on site.

## SAMPLE DISPOSAL

CONSULTANT will dispose of soil, rock, and water samples collected for analyses approximately thirty (30) days after the laboratory analysis report date. Further storage or transfer of samples can be made at CLIENT's expense upon CLIENT's prior written request.

## OWNERSHIP AND MAINTENANCE OF DOCUMENTS

Unless otherwise specified in this Agreement or in an Addendum, and provided that CONSULTANT has been fully paid for the Services, CLIENT shall have the right to use the documents, maps, photographs, drawings and specifications resulting from CONSULTANT's efforts on the project, for purposes reasonably contemplated by the parties. CONSULTANT shall have the right, but shall not be obligated, to retain copies of all such materials and shall have the right to use the same for any purpose, unless such use would be expected to cause harm to CLIENT. CLIENT shall specify in advance, in writing, and be charged for all arrangements for special or extended-period maintenance of such materials by CONSULTANT. CONSULTANT retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services.

Reuse of any material described by CLIENT, including publication to third parties, on extension of this project or on any other project without CONSULTANT's written authorization, shall be at CLIENT's risk, and CLIENT agrees to indemnify,

defend, and hold harmless CONSULTANT from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized reuse.

## BILLING AND PAYMENT

CLIENT will pay CONSULTANT in accordance with the procedures indicated in the Proposal and its attachments. Invoices will be submitted to CLIENT by CONSULTANT, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify CONSULTANT in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. CLIENT will pay an additional charge of three quarters of a percent (.75) per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by CLIENT to CONSULTANT per CONSULTANT's current fee schedules. In the event CLIENT fails to pay CONSULTANT within sixty (60) days after invoices are rendered, CLIENT agrees that CONSULTANT will have the right to consider the failure to pay the CONSULTANT's invoice as a breach of this AGREEMENT and CONSULTANT may cease work on the project. At CONSULTANT's option, CONSULTANT may waive said major breach upon payment by CLIENT of all arrearages and outstanding invoices.

## TERMINATION

This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by either party, or if CLIENT suspends the work for more than three (3) months. In the event of termination, CONSULTANT will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to, the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

## RISK ALLOCATION

Many risks potentially affect CONSULTANT by virtue of entering into this AGREEMENT to perform professional consulting services on behalf of CLIENT. The principal risk is the potential for human error by CONSULTANT. For CLIENT to obtain the benefit of a fee which includes a nominal allowance for dealing with CONSULTANT's liability, CLIENT agrees to limit CONSULTANT's liability to CLIENT and to all other parties for claims arising out of CONSULTANT's performance of the services described in this AGREEMENT. The aggregate liability of CONSULTANT will not exceed \$50,000 for negligent professional acts, errors, or omissions, including attorney's fees and costs which may be awarded to the prevailing party, and CLIENT agrees to indemnify and hold harmless CONSULTANT from and against all liabilities in excess of the monetary limit established above.

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join CONSULTANT as a third-party defendant. Parties means CLIENT and CONSULTANT and their officers, employees, agents, affiliates, and subcontractors.

Both CLIENT and CONSULTANT agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT.

## INDEMNIFICATION

If any claim is brought against CONSULTANT, its employees, agents and subcontractors and/or CLIENT by a third party, relating in any way to the Services, the contribution and indemnification rights and obligations of CONSULTANT and Client, subject to the paragraph titled "Risk Allocation" above, such claim shall be determined as follows:

1. If any negligence, breach of contract, or willful misconduct of CONSULTANT caused any damage, injury, or loss claimed by the third party, then CONSULTANT and CLIENT shall each indemnify the other against any

loss or judgement on a comparative negligence basis (CLIENT responsibility to include that of its agents, employees, and other contractors); and

2. Unless CONSULTANT was liable for negligence, breach of contract, or willful misconduct which in whole or in part, caused the damage, injury, or loss asserted in the third party claim, CLIENT shall indemnify CONSULTANT against the claim, liability, loss, legal fees, consulting fees, and other costs of defense reasonably incurred.

## DISPUTE RESOLUTION

If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation, then:

1. The claim will be brought and tried in judicial jurisdiction of the court of the county where CONSULTANT's principal place of business is located and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and;
2. The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' and expert witness fees, and other claim-related expenses

## GOVERNING LAW AND SURVIVAL

If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Risk allocation and indemnities will survive termination or failure of this AGREEMENT for any cause.

The parties have read, or had the opportunity to read, the foregoing, including all attachments, addendums, and exhibits hereto, have had an opportunity to discuss the same, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed below by CLIENT.

\_\_\_\_\_  
**Printed Name of Client or Authorized Agent**

\_\_\_\_\_  
**Signature of Client or Authorized Agent**

*Beth McDonald*

\_\_\_\_\_  
**Beth McDonald, PE, PG / Principal Engineer**

\_\_\_\_\_  
**Date**

04/5/19

\_\_\_\_\_  
**Date**

**PM: BM**