

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

      N/20-25        
Series of 2020

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH NINYO & MOORE**

WHEREAS, NURA desires to contract with Ninyo & Moore for professional services for urban renewal projects as set forth in the attached professional services agreement.

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

Section 1. The Professional Services Agreement attached hereto as **Attachment A** is hereby approved and the Chair is authorized to execute the same on behalf of the Authority.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

ATTEST:

APPROVED AS TO FORM

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

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

**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Northglenn Urban Renewal Authority, State of Colorado (hereinafter referred to as the "NURA") and Ninyo & Moore (hereinafter referred to as "Consultant").

**RECITALS:**

A. NURA requires professional services.

B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Consultant shall provide to NURA, professional consulting services for the Project.

**I. SCOPE OF SERVICES**

Consultant shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project which are described or reasonably implied from **Exhibit A** which is attached hereto and incorporated herein by this reference.

**II. NURA'S OBLIGATIONS/CONFIDENTIALITY**

NURA shall provide Consultant with reports and such other data as may be available to NURA and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of NURA or pursuant to a lawful court order directing such disclosure. All documents provided by NURA to Consultant shall be returned to NURA. Consultant is authorized by NURA to retain copies of such data and materials at Consultant's expense.

**III. OWNERSHIP OF WORK PRODUCT**

The City acknowledges that the Consultant's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of NURA upon completion of the work.

**IV. COMPENSATION**

A. In consideration for the completion of the services specified herein by Consultant, NURA shall pay Consultant an amount not to exceed twenty one thousand eight hundred dollars (\$21,800 ). Payment shall be made in accordance with the schedule of charges in Exhibit B which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Consultant under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by NURA.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to NURA no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. NURA has the right to ask for clarification on any Consultant invoice after receipt of the invoice by NURA.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by NURA) required by this Agreement have been turned over to and approved by NURA and upon receipt by NURA of Consultant's certification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

#### **V. COMMENCEMENT AND COMPLETION OF WORK**

Within seven (7) days of receipt from NURA of a Notice to Proceed, Consultant shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by NURA, the Project shall be complete and Consultant shall furnish NURA the specified deliverables as provided in Exhibit A.

#### **VI. CHANGES IN SCOPE OF SERVICES**

A change in the Scope of Services shall constitute any material change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by NURA. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of NURA shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

#### **VII. PROFESSIONAL RESPONSIBILITY**

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse NURA for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by NURA of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the work. Neither NURA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of NURA provided for under this Agreement are in addition to any other rights and remedies provided by law.

### **VIII. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

B. Prohibited Acts. Consultant shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Consultant shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Consultant shall:

a. Notify the subcontractor and NURA within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

- b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

D. Duty to Comply with Investigations. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Agreement.

E. If Consultant does not currently employ any employees, Consultant shall sign the NO Employee Affidavit attached hereto.

F. If Consultant wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Consultant shall sign the Department Program Affidavit attached hereto.

## **IX. INDEMNIFICATION**

A. INDEMNIFICATION – GENERAL: NURA cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant, to the fullest extent permitted by law, shall defend, indemnify and hold harmless NURA, its Council members, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless NURA, its Council members, its officers, agents and employees from damages resulting from the negligence of the Council members, officials, officers, directors, agents and employees.

B. INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE: The Consultant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless NURA, its Council members, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs and expenses, including reasonable attorneys fees, but only to the extent caused by or arising out of the negligent acts, errors or omissions of the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph IX.B. to indemnify NURA for the negligent acts of NURA, its Council members, or any of its officials, officers, directors, agents and employees.

C. INDEMNIFICATION – COSTS: Consultant shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands at the sole expense of Consultant or, at the option of NURA, agrees to pay NURA or reimburse NURA for the defense costs incurred by NURA in connection with any such liability, claims or demands. Consultant shall, to the fullest extent permitted by law, defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the City, its Council members, officials, officers, directors, agents and employees, NURA shall reimburse Consultant for the portion of the judgment attributable to such act, omission or other fault of the City, its Council members, officials, officers, directors, agents and employees.

**X. INSURANCE**

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section IX, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section IX, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

B. Consultant shall procure and maintain, and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to NURA. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section IX, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workmen's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Contract, and Employer's Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease - policy limit, and five hundred thousand dollars (\$500,000) disease - each employee.

2. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

C. The policy required by paragraph 2. above shall be endorsed to include NURA and NURA's officers, employees, and consultants as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by NURA, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

D. The certificate of insurance provided for NURA shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by NURA prior to commencement of the Agreement. No other form of certificate shall be used. If NURA is named as an additional insured on any policy which does not allow for the automatic addition of additional insureds, the Consultant's insurance agent shall also provide a copy of all accompanying endorsements recognizing NURA as an additional insured. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to NURA. The completed certificate of insurance shall be sent to:

Northglenn Urban Renewal Authority  
Attn:  
11701 Community Center Drive  
Northglenn, Colorado 80233-8061

E. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which NURA may immediately terminate this Agreement, or at its discretion, NURA may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by NURA shall be repaid by Consultant to NURA upon demand, or NURA may offset the cost of the premiums against any monies due to Consultant from NURA.

F. NURA reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

G. The parties hereto understand and agree that NURA, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty thousand dollars (\$350,000) per person and nine hundred ninety thousand dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat., §§ 24-10-101, et seq., as from time to time amended, or otherwise available to NURA, its officers, or its employees.

**XI. NON-ASSIGNABILITY**

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

**XII. TERMINATION**

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon NURA's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by NURA's issuance of said written notice of intent to terminate, NURA shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, NURA shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by NURA thereafter shall be at NURA's sole risk, unless otherwise consented to by Consultant.

**XIII. CONFLICT OF INTEREST**

The Consultant shall disclose any personal or private interest related to property or business within NURA. Upon disclosure of any such personal or private interest, NURA shall determine if the interest constitutes a conflict of interest. If NURA determines that a conflict of interest exists, NURA may treat such conflict of interest as a default and terminate this Agreement.

**XIV. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

**XV. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of NURA for any purposes.

**XVI. NO WAIVER**

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by NURA shall not constitute a waiver of any of the other terms or obligation of this Agreement.

**XVII. ENTIRE AGREEMENT**

This Agreement and the attached Exhibits A and B is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

**XVIII. SUBJECT TO ANNUAL APPROPRIATION**

Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations of NURA not to be performed during the current fiscal year are subject to annual appropriation, and thus any obligations of NURA hereunder shall extend only to monies currently appropriated.

**XIX. NOTICE**

Any notice or communication between Consultant and NURA which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

NURA: Northglenn Urban Renewal  
Authority 11701 Community  
Center Drive Northglenn, Colorado  
80233-8061

Consultant: *Wm McDonald*  
*Principal Engineer*  
*Wong + Moore*



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

**NORTHGLENN URBAN RENEWAL AUTHORITY,  
COLORADO**

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

Rosie Garner  
Print Name

Chair  
Title \_\_\_\_\_ Date

ATTEST  
:  
\_\_\_\_\_  
Debbie Tuttle Date  
Executive Director

APPROVED AS TO FORM:

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

**CONSULTANT:**

By: *Beth McDonald*

Beth McDonald  
Print Name

Principal Engineer 9/16/2020  
Title Date

ATTEST:  
By: *Liana Master*

Liana Master  
Print Name

Administrative Assistant 9/16/2020  
Title Date

City's Project Manager  
\_\_\_\_\_

PROSPECTIVE CONSULTANT'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING  
WITH AN ILLEGAL ALIEN

FROM: Wingo + Moore  
(Prospective Consultant)

TO: Northglenn Urban Renewal  
Authority PO Box 330061  
11701 Community Center Drive  
Northglenn, CO 80233

Project Name \_\_\_\_\_

Bid Number \_\_\_\_\_

Project No. \_\_\_\_\_

As a prospective Consultant for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this 15 day of Sept, 2020.

Prospective Consultant Wingo + Moore

By: Wmmy Daniel

Title: Principal Engineer

**NO EMPLOYEE AFFIDAVIT**

**1. Check and complete one:**

I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_, I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with NURA, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**OR**

I, \_\_\_\_\_, am an owner/member/shareholder of \_\_\_\_\_, a [specify type of entity-*i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with NURA, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

I, Melanie McDonald, am a United States citizen or legal permanent resident.

*NURA must verify this statement by reviewing one of the following items:*

- o A valid Colorado Driver's license or a Colorado identification card*
- o A United States military card or a military dependent's identification card*
- o A United States Coast Guard Merchant Mariner card*
- o A Native American tribal document or*
- o In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card*
- o Any other documents or combination of documents listed in the City's "Acceptable Documents for Lawful Presence Verification" chart that prove both the consultant's citizenship/lawful presence and identity.*

**OR**

I am otherwise lawfully present in the United States pursuant to federal law.

*Consultant must verify this statement through the federal systematic alien verification of entitlement program, the "SAVE" program, and provide such verification to NURA.*

Melanie McDonald  
Signature

9/15/2020  
Date

DEPARTMENT PROGRAM AFFIDAVIT

(To be completed if Consultant participates in the Department of Labor Lawful Presence Verification Program)

I, Melanie McDonald as a public contractor under contract with the Northglenn (the "City"), hereby affirm Urban Renewal Authority that:

- 1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Contract") with the Town within twenty (20) days after such hiring date;
- 2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Contract; and
- 3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Contract.

Melanie McDonald  
Consultant Signature

9/15/2020  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 15<sup>th</sup> day of September, 2020, by Beth McDonald as Principal Engineer of Ninyo & Moore

My commission expires: (S



Liana Master  
Notary Public

## SCOPE OF WORK & FEES



Geotechnical & Environmental Sciences Consultants

September 10, 2020  
Proposal No. 11-00854

Ms. Debbie Tuttle, Executive Director  
Northglenn Urban Renewal Authority  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

Subject: Proposal to Conduct Phase I and II Environmental Site Assessments and  
Pre-Demolition Asbestos Survey  
Retail Storefront/Office Building  
11221 & 11215 Washington Street  
Northglenn, Colorado

Dear Ms. Tuttle:

Ninyo & Moore is pleased to submit this proposal to provide environmental services for the above-referenced site. This proposal was prepared based on the project background information received from you and our previous experience with similar projects in the vicinity of the subject site. This proposal includes our project understanding, scope of services, assumptions, fees, and schedule.

### **PROJECT UNDERSTANDING**

We understand that Northglenn Urban Renewal Authority (NURA) is considering the purchase of the retail storefront/office property located at 11221 & 11215 Washington Street in Northglenn, Colorado. The project site consists of two parcels of land designated as Adams County Assessor Parcel IDs 171903400004 (11215 Washington Street) and 171903400005 (11221 Washington Street). The total land area is approximately 0.39 acres and it is occupied by two buildings. The building addressed 11215 Washington Street is an approximately 1,848-square foot (sf), 1-story building constructed in 1978. The building addressed as 11221 Washington Street is an approximately 2,200-sf, 1-story building with garden level constructed in 1963. The current project plan involves the demolition of the two existing buildings.

As requested, the following scope of services is provided for the site and includes a Phase I Environmental Site Assessment (ESA), an optional Limited Phase II ESA, and a pre-demolition asbestos and hazardous building materials survey. The scope of services proposed is discussed below.

## SCOPE OF SERVICES

Ninyo & Moore's proposed scope of services will include the activities listed below:

### TASK 1 – PHASE I ENVIRONMENTAL SITE ASSESSMENT

The scope of services for the Phase I ESA will be consistent with the ASTM International (ASTM) Standard Practice E 1527-13, and the United States Environmental Protection Agency All Appropriate Inquiry rule. The scope of services will include the following:

- Reviewing lease, title and lien records for the site, if provided by the client, to evaluate probable past site uses and their possible impact on the current environmental status of the site. The client is requested to provide a recent title and lien report for the property, if available. Alternatively, Ninyo & Moore can obtain these items at an additional fee at the request of the client.
- Reviewing readily available maps and environmental reports pertaining to the site, as provided by the client. The client is requested to provide copies of documents in its possession.
- Conducting an interview with a site representative regarding the environmental status of the site.
- Performing a site reconnaissance to document potential hazardous materials handling, storage, and disposal practices. In addition, the site reconnaissance will document areas of potentially contaminated surficial soil or surface water, possible sources of polychlorinated biphenyls, underground and aboveground storage tanks, and possible sources of contamination from activities at the site and adjacent properties. Features will be shown on a site map to be included in the report.
- Reviewing federal, state, and local regulatory agency databases for the site and for adjoining properties. The purpose of this review is to evaluate the possible environmental impact to the site from current or historical on- and off-site activities. Databases will identify locations of known hazardous waste sites, landfills, leaking underground storage tanks, permitted facilities that utilize underground storage tanks, and facilities that use, store, or dispose of hazardous materials.
- Reviewing reasonably ascertainable local regulatory agency files for the site and adjacent properties. Requests will be made to County Environmental Health Departments and other agencies, as appropriate. Reviewing reasonably ascertainable historical documents, including aerial photographs and topographic maps, as appropriate.
- Performing a preliminary vapor encroachment screening to evaluate the potential for vapor encroachment conditions.

Preparing a Phase I ESA report documenting findings and providing opinions regarding possible environmental impacts at the site.

## TASK 2 - LIMITED PHASE II ENVIRONMENTAL SCOPE OF SERVICES

### (optional)

Based on the RECs identified in the Phase I ESA, the following scope of services may change and may not be needed for the site. The objective of the proposed survey as it is listed below is to determine if impacts are present in the site soil and groundwater from potential off-site RECs.

- Ninyo & Moore will prepare a Health and Safety Plan (HASP) prior to commencement of field activities. The HASP will address field tasks to be conducted by Ninyo & Moore and include utility locating, drilling, soil and groundwater sampling. The HASP will be reviewed by field personnel prior to beginning field activities each field day.
- Ninyo & Moore will notify the Utility Notification Control Commission (UNCC) to mark the locations of underground utilities entering the site. In addition, a private utility locating service will also be retained to located utilities within the site boundaries and to 'clear' planned boring locations.
- Three soil borings will be advanced to a depth 35 feet bgs using a direct-push or hollow-stem auger drilling rig. Soil will be screened for obvious evidence of impacts including staining and odors. Soil samples will be collected and described in 5 foot intervals.
- It is assumed that one soil sample will be collected from each boring for laboratory analysis. These three soil samples will be analyzed for RCRA Metals, TPH-g, TPH-d, and TPH-o, VOCs, and SVOCs. One groundwater sample per boring will also be collected using 1" temporary PVC casing, assuming groundwater is encountered.
- Upon completion of sampling activities, Ninyo & Moore will remove temporary PVC casings and fill the borings with native material and place cold-patch asphalt at the surface.
- Ninyo & Moore will review field data and laboratory analytical results, and compare reported concentrations to the pertinent regulatory standards. Ninyo & Moore will prepare a report summarizing the findings of the sampling activities at the site. Based on the results of the assessment, Ninyo & Moore will provide recommendations for redevelopment, as necessary.

## TASK 3 – PRE-DEMOLITION HAZARDOUS BUILDING MATERIALS SURVEY

Ninyo & Moore will conduct a pre-demolition asbestos-containing materials survey of the two existing on-site buildings that will consist of the following. The scope for this task is designed to assist you in preparing for building demolition by identifying asbestos-containing building materials (ACBM) and other potential hazardous materials such as lead based paint (LBP), mercury-containing switches and light fixtures, and Polychlorinated Biphenyl (PCB)-containing light ballasts and transformers that may need to be removed prior to demolition. The specific scope is as follows:

The CDPHE building inspection and demolition process included in Regulation 8, requires one demolition permit, per building. Also, any asbestos abatement that may be necessary prior to building demolition will also require approved permits on a per-building basis. Therefore, two reports will be provided, one for each building.

The scope of work for the ACBM inspections includes the following tasks:

- Prepare a Health and Safety Plan for the work to be conducted by Ninyo & Moore personnel.
- Mobilization to the site for visual assessment of the site buildings and associated suspect ACBM to define homogeneous areas and sampling scheme.
- Up to 100 samples collected and laboratory analyzed by Polarized Light Microscopy (PLM) have been assumed for the project however, should additional samples be necessary in order to comply with AHERA and CDPHE regulations, they will be collected and analyzed upon your approval of an additional \$8.50 per sample. Analysis will be scheduled for a normal, one week turn-around time. Should sampling activities be delayed until such time as a rapid turn-around time is necessary, an additional fee may apply to expedited samples. Samples estimated to contain less than one percent asbestos according to PLM Method may have to be point counted to confirm the asbestos percentage is less than one percent. Additional sample analysis will be provided for an extra charge.
- The Inspections will be conducted in general accordance with the AHERA and the CDPHE Regulation 8, Part B.

The ACBM Inspection will be conducted by a Colorado-Certified Asbestos Building Inspector (CABI). Our services will be conducted in a manner to fully assess the space to evaluate the quantity of hazardous materials. Samples will be collected in a destructive manner to ensure all hazardous materials have been addressed. In order to comply with CDPHE regulations for Pre-Demolition ACBM Surveys, all building components must be observed; including interstitial wall spaces, flooring underneath existing floor, roofing materials, etc. This necessarily requires some destructive techniques.

## **ASSUMPTIONS**

The following assumptions will apply to the performance of the geotechnical scope of services described above:

- Ninyo & Moore is only responsible for contacting UNCC to locate the publicly owned utilities.
- Site access during normal business hours will be granted to Ninyo & Moore.
- Ninyo & Moore will contact the client and/or their representative to obtain site access.



## FEE ESTIMATE

We propose to perform the geotechnical scope of services listed above for following fees:

Scope of Services	Fee
Phase I ESA	\$2,700.00 (Lump Sum)
Limited Phase II ESA	\$14,600.00 (Lump Sum)
ACMS/HBMS	\$4,500.00 (Lump Sum)

Additional services that are not outlined in the above scope of services can be provided in accordance with our current schedule of fees, upon request.

## SCHEDULE

Ninyo & Moore is prepared to initiate this project immediately upon receiving Notice-to-Proceed (NTP). Site access for the field work will be initiated immediately and field work will be scheduled as access is granted.

The Phase I ESA site reconnaissance can be initiated within 5 business days of NTP and the report will be provided within ten business days. The Limited Phase II ESA report and the ACBMS report will be issued within 10 business days of completion of sampling operations. We will notify you immediately, if we encounter delays due to utility locate delays or inclement weather conditions.

If this proposal meets your approval, please sign the attached Work Authorization Agreement and return a copy to us. We appreciate the opportunity to submit this proposal and look forward to working with you on this project.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project.

Respectfully submitted,  
**NINYO & MOORE**



Steven R. Truesdale, PG  
Senior Geologist



Beth McDonald, PE, PG  
Principal Engineer

SRT/BM/lm

Attachment: Work Authorization and Agreement

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



Geotechnical & Environmental Sciences Consultants

## WORK AUTHORIZATION AND AGREEMENT

Please Sign and Return One Copy to:

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

PROPOSAL NO. **11-00854**

1. PROJECT ADDRESS: **11221 & 11215 Washington Street, Northglenn, Colorado**
2. PROJECT DESCRIPTION: **Proposal to Conduct Phase I and Phase II Environmental Site Assessments and Pre-Demolition Asbestos Survey**
3. SCOPE OF STUDY: **Please refer to proposal dated September 10, 2020.**
4. FEE: **Phase I ESA - \$2,700 (Two Thousand Seven Hundred Dollars – Lump Sum)**  
**Limited Phase II ESA - \$14,600 (Fourteen Thousand Six Hundred Dollars – Lump Sum)**  
**ACMS/HBMS - \$4,500 (Four Thousand Five Hundred Dollars – Lump Sum)**
5. PORTION OF FEE IN ADVANCE OF WORK: **None**
6. CLIENT: **Northglenn Urban Renewal Authority** PHONE: **(303) 451-8326**  
**11701 Community Center Drive, P.O. Box 330061, Northglenn, Colorado 80233**  
CONTACT: **Ms. Debbie Tuttle, Executive Director** PHONE: **(303) 451-8326**
7. STATEMENT TO BE SENT TO: **Client**

## 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. **11-00854** dated **September 10, 2020**, 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

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Beth McDonald, Principal Engineer  
PM: BM

09/10/2020  
\_\_\_\_\_  
Date