

CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS, a California corporation ("PERMITTEE"), to be effective as of the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of real property located in the County of San Diego, State of California, and commonly known as the World Trade Center, 1250 Sixth Avenue, San Diego, California 92101 (the "Property").
- B. To allow the cleanup of previous work performed on the Property and related to the performance of due diligence for CITY'S sale of the Property to The Redevelopment Agency of the City of San Diego, CITY will grant PERMITTEE access to the Property to perform 3rd party air monitoring under the terms and conditions of this Permit.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE to enter upon that portion of the Property (the "Permit Area") specifically set forth in the work plan attached hereto as **Exhibit A: Work Plan** ("Work Plan") solely for the purpose of completing the Work Plan (the "Permit Use"), and for no other purpose whatsoever without CITY'S prior written consent in each instance.
 - a. Conditions. PERMITTEE shall provide appropriate California Asbestos Consultant accreditation and California Lead Inspector/Assessor or Project Monitor accreditation and be on site during all asbestos/lead clean up and abatement. PERMITTEE shall provide area air sampling during the work; project observation to ensure compliance with the Work Plan and regulations; visual clearance inspections at completion of work; and final clearance asbestos air sampling by Transmission Electron Microscopy (TEM) and lead dust surface sampling in all abatement areas.
 - b. Prior Notice. PERMITTEE shall coordinate access to the Permit Area with **Mary Carlson, Supervising Property Agent (619-236-6079; MMCarlson@sandiego.gov)**, or such other CITY staff members as CITY may designate from time to time.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis to perform the Permit Use, excluding any modification of the Property's exterior whatsoever, and to maintain and restore the Permit Area as required by this Permit (the "Permit Use"). PERMITTEE shall obtain all required permits and reasonably appropriate security for the

Permit Use. PERMITTEE shall promptly repair any and all damage resulting from the Permit Use and restore the Permit Area as reasonably directed by CITY and to CITY'S reasonable satisfaction, but in no event shall PERMITTEE be required to improve the Permit Area beyond its condition immediately prior to the Permit Use. PERMITTEE shall deliver to CITY copies of all written reports and findings related to the Permit Use ("Reports") as soon as they are available.

3. Asbestos & Lead Disclosure. Portions of the Property contain asbestos and lead-containing materials. PERMITTEE shall disclose to all appropriate parties the existence of asbestos and lead in the Property.
 - a. Ceiling Tiles. The basement, third, and fourth floors of the Property are known to contain asbestos fireproofing above the ceiling tiles. Ceiling tiles on other floors may also have asbestos above them and should be opened with caution. PERMITTEE shall ensure that its employees, agents, and contractors will not move any ceiling tiles or impact the ceiling grid system in the Permit Area without CITY'S express written authorization. In addition, one-foot by one-foot glued on ceiling tiles in janitorial closets have tested positive for containing asbestos.
 - b. Thermal System Insulation. The thermal system insulation throughout the Property contains asbestos and may not be disturbed in any way. PERMITTEE shall notify CITY immediately if any disturbance or damage to the thermal system insulation is caused or discovered by PERMITTEE or its employees, agents, or contractors.
 - c. Sub-Basement Area. A mechanical room in the sub-basement of the Property contains a mechanical room (the "Restricted Area") that is known to contain asbestos fireproofing. The location of the Restricted Area is designated in **Exhibit B: Restricted Area**, attached hereto. PERMITTEE and its employees, agents, and contractors shall not enter the Restricted Area without CITY'S express written authorization in each instance.
 - d. Lead. All painted surfaces are assumed to contain lead above regulatory thresholds and shall not be disturbed in any way without CITY'S express written authorization in each instance.
4. Asbestos & Lead. If PERMITTEE makes alterations or repairs to the Permit Area, PERMITTEE shall be responsible for all required asbestos and lead removal, management, or containment, and shall pay all costs associated therewith. Asbestos and lead removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY may, at its discretion, station supervisory personnel at the work site to ensure that PERMITTEE'S obligations under this section are fulfilled.
5. Permit Fee. Consideration to CITY for granting the license under this Permit shall be the completion of the Permit Use and the delivery of the Reports as required by this Permit.
6. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall

expire five (5) business days thereafter. Notwithstanding the foregoing, CITY may terminate this Permit at will, in its sole discretion.

7. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
8. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
 - i. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - ii. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage;
 - iii. Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000); and
 - iv. For use of the Permit Area involving any contact with hazardous substances, the insurance coverage specified in that certain "Standard Specifications for Public Works Construction (The WHITEBOOK, 2010 Edition)," and subject to all related terms and conditions therein related to PERMITTEE'S use of the Permit Area.
- 8.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- 8.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 8.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- 8.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 8.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 8.6. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.
- 8.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
9. Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or the use and occupancy of the Permit Area by PERMITTEE or its employees, agents, or contractors, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. The rights and obligations under this section shall survive the expiration or termination of this Permit.
10. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permit Use and any damages to the

improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

11. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
12. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all competent legal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and the Permit Use.
13. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY'S prior written consent.
14. Encumbrances. PERMITTEE shall keep the Property and the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit, the Permit Use, or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property or the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
15. Maintenance of the Permit Area. PERMITTEE shall, to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term.
16. Existing Tenants. PERMITTEE represents and warrants that the Permit Use shall be performed in such a manner that will not interfere with any other person's legal use and occupancy of the Property.
17. Inspection. CITY may, at any and all times, enter and inspect the Permit Area and/or the Permit Use.
23. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of hazardous or otherwise regulated substances in, on, under, or from the Property. PERMITTEE and PERMITTEE'S agents, and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Property without CITY'S prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control

District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

- a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- b. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Property results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, PERMITTEE shall pay all costs of remediation and removal to the CITY'S satisfaction for unrestricted reuse of the Property, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If PERMITTEE or PERMITTEE'S contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Property, PERMITTEE and/or PERMITTEE'S contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Property immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Property and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Property. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- d. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Property, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- e. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Property, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a

written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Property.

- a. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on, from or beneath the Property, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, from or under the Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Property, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Property and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.
18. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
19. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
20. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

21. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Permit, PERMITTEE shall pay all costs in connection therewith, including reasonable attorney fees and costs.
22. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES
CONSULTANTS

Attn: ~~Avram Ninyo~~ 
5710 Ruffin Road
San Diego, CA 92123-1013

23. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Use or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the Permit Use or PERMITTEE'S use of the Permit Area.

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24. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

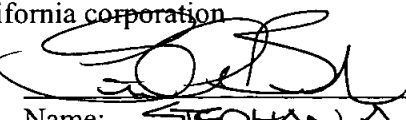
Date: 6/7/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: _____

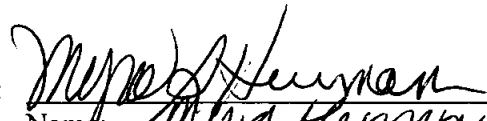
NINYO & MOORE GEOTECHNICAL & ENVIRONMENTAL SCIENCES CONSULTANTS, a California corporation

BY: 
Name: STEPHAN A BECK
Title: PRINCIPAL

Environmental Analysis Section Environmental Clearance:

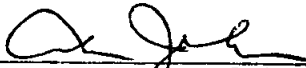
This Project is covered under the Final Environmental Impact Report (FEIR) for the Centre City Redevelopment Plan certified by the Redevelopment Agency ("Agency") on March 14, 2006 (Resolution R-04001) and subsequent addenda to the FEIR certified by the Agency on August 3, 2007 (Agency Resolution R-04193), April 21, 2010 (Agency Resolutions R-04508 and R-04510), and August 3, 2010 (Agency Resolution R-04544) in compliance with the California Environmental Quality Act (CEQA). The FEIR is a "Program EIR" prepared in compliance with State CEQA Guidelines Section 15168. In accordance with Agency's procedures, an Environmental Secondary Study (ESS) dated January 3, 2011 has been prepared which has made certain findings with respect to the impacts on the environment compared to the analysis performed in the FEIR. This Right-of-Entry is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section 15168/15162 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review.

Date: 6/3/11

BY: 
Name: Myra Hermann
Title: Senior Planner

*Environmental Services Dept/Energy, Sustainability & Environmental Protection Division
Clearance:*

Date: 6/2/11

BY: 
Name: Allen Johnson
Title: Program Manager

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

Sign 8

Exhibit A: Work Plan

[TO FOLLOW BEHIND THIS PAGE]

May 4, 2011
(Revised May 13, 2011)
Proposal No. P-20276

Mr. David Billings
Connections Housing Downtown LP
c/o Affirmed Housing Group
13520 Evening Creek Drive N, Suite 160
San Diego, California 92128

Subject: Hazardous Material Support Services
World Trade Center
1250 Sixth Avenue
San Diego, California

Dear Mr. Billings:

In response to your request, Ninyo & Moore is pleased to submit this proposal to perform hazardous material support services. We understand that asbestos-containing drywall and fireproofing was disturbed in three separate areas on the first and second floors and basement level of the building. We understand that an asbestos abatement contractor has been contracted to clean these areas of the building. Our hazardous material support services will include abatement oversight, air monitoring, clearance inspections, and preparation of project closeout documentation. Our scope of services, presented below, was developed based on our visual observation of the work areas during our site reconnaissance on May 3, 2011 and through our conversations with Mr. George Katsikaris of the City of San Diego Environmental Services Department (ESD).

SCOPE OF SERVICES

Ninyo & Moore's proposed scope of work will include the following:

- Based on our understanding of the project, it has been assumed that oversight management services will require approximately three, 9-hour shifts for contractor observation and air monitoring. Oversight activities will be conducted by either a State of California Department of Occupational Safety and Health (DOSH) Certified Asbestos Consultant (CAC) or a Certified Site Surveillance Technician (CSST) under the supervision of a CAC.
- During asbestos-containing material (ACM) abatement, work activities will be monitored for compliance with appropriate federal, state, and local regulations. Asbestos air samples will be analyzed using phase contrast microscopy (PCM) in accordance with the National Insti-

tute for Occupational Safety and Health (NIOSH) method 7400. Air samples will be analyzed by EMSL Analytical, Inc. (EMSL) of San Diego, California on a 24-hour turnaround time and will be forwarded to ESD for review. EMSL is accredited through the National Voluntary Laboratory Accreditation Program (NVLAP) for airborne asbestos fiber analysis.

- Conduct a post-abatement, final visual inspection for each of the three work areas. Each work area will be visually assessed to ensure that ACMs, ACM-residue, and ACM-debris have been removed from the work area.
- Collect up to five post-cleanup clearance samples for the work area in the basement level of the building. Clearance air samples will be analyzed using transmission electron microscopy (TEM) in accordance with the methodology described in 40 CFR Part 763, Subpart E, Appendix A. Air samples will be analyzed by EMSL on a 24-hour turnaround time and will be forwarded to ESD for review.
- Prepare a contractor observation report upon completion of abatement activities. The report will be submitted within approximately three weeks of completion of the abatement activities.

COMPENSATION

Our lump sum fee to perform the proposed scope of services for the site is \$4,035 (Four Thousand Thirty-Five Dollars). A breakdown of the estimated fee is presented in the attached Table 1. The estimated fee is based on the scope of services presented above, and our understanding of the existing conditions. The fee does not include costs that may arise due to unforeseen or unfavorable conditions, or for post-abatement consultations, beyond the scope of services described herein. Our fees for such services, if provided, will be on a time-and-materials basis, in accordance with the fees presented in Table 1.

ASSUMPTIONS

The conditions listed below will apply to the performance of the scope of service described herein.

- We have estimated that our contractor observation and air monitoring services will last three, 9-hour shifts.
- We have estimated that up to 12 air samples (four samples per work area) will be collected for analysis by PCM methods and five air samples will be collected for analysis by TEM methods.
- We understand that the waste material generated during cleanup activities on the first and second floors will be disposed of as construction debris and the waste material generated during cleanup activities in the basement will be disposed of as friable asbestos waste (e.g., hazardous waste). Waste characterization of any other hazardous materials will be the responsibility of

the abatement contractor (i.e., Allied Industries, Inc.). Preparation of statements or certificates of non-friability of ACM will also be the responsibility of the abatement contractor.

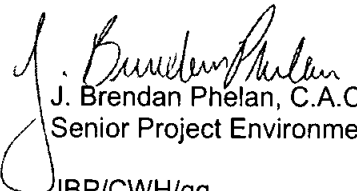
- Should conditions be encountered that warrant additional days of contractor observation, the Connections Housing Downtown LP, Affirmed Housing Group, or an authorized representative will be contacted as soon as possible, and the invoicing will be adjusted accordingly. If the shifts extend beyond 9 hours, Connections Housing Downtown LP or Affirmed Housing Group will also be invoiced accordingly.

SCHEDULE

Following receipt of your written authorization to proceed, Ninyo & Moore will commence services described herein. We understand that cleanup activities are scheduled to begin the week of May 16, 2011, pending receipt of the Right of Entry permits from the City of San Diego.

If the terms and conditions of this proposal meet with your approval, please sign and return the attached Work Authorization and Agreement Form to initiate project activities. We trust that this proposal satisfies your current requirements and assure you that Ninyo & Moore will be responsive to your needs. We appreciate the opportunity to submit our proposal to perform the requested services, and look forward to the continuation of a successful relationship with you on Connections Housing Downtown LP or Affirmed Housing Group projects.

Sincerely,
NINYO & MOORE


J. Brendan Phelan, C.A.C. No. 06-3948
Senior Project Environmental Scientist
JBP/CWH/gg


C. Wood Hays
Principal Environmental Manager

Attachment: Table 1 – Breakdown of Estimated Fee
Work Authorization and Agreement Form

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

TABLE 1 – BREAKDOWN OF ESTIMATED FEE

OVERSIGHT MANAGEMENT			
Certified Asbestos Consultant	3 hours @ \$ 97.00 /hour	\$	291.00
Certified Site Surveillance Technician	27 hours @ \$ 84.00 /hour	\$	2,268.00
Air Monitoring Pump Usage	2 days @ \$ 60.00 /day	\$	120.00
PCM Air Sample (1 day Turnaround Time)	12 tests @ \$ 9.00 /test	\$	108.00
TEM Air Sample (1 day Turnaround Time)	5 tests @ \$ 95.00 /test	\$	475.00
Subtotal			\$ 3,262.00

CLOSEOUT REPORT PREPARATION			
Principal Engineer/Geologist/Environmental Scientist	1 hour @ \$ 143.00 /hour	\$	143.00
Certified Asbestos Consultant	2 hours @ \$ 97.00 /hour	\$	194.00
Certified Site Surveillance Technician	4 hours @ \$ 84.00 /hour	\$	336.00
Data Processing, Technical Editing, or Reproduction	2 hours @ \$ 50.00 /hour	\$	100.00
Subtotal			\$ 773.00

TOTAL ESTIMATED FEE			\$ 4,035.00
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WORK AUTHORIZATION AND AGREEMENT

Please Sign and Return One Copy to:

NINYO & MOORE
5710 Ruffin Road
San Diego, California 92123

PROJECT NO. **P-20276**

1. PROJECT ADDRESS: **1250 Sixth Avenue, San Diego, California.**
2. PROJECT DESCRIPTION: **Hazardous Material Support Services.**
3. SCOPE OF STUDY: **Please refer to proposal dated revised May 13, 2011.**
4. FEE: **\$4,035 (Four Thousand Thirty-Five Dollars – Lump Sum).**
5. PORTION OF FEE IN ADVANCE OF WORK: **None.**
6. CLIENT: **CONNECTION HOUSING DOWNTOWN LP**
13520 Evening Creek Drive N, Suite 160
San Diego, California 92128
PHONE: **760-579-3191**
- CONTACT: **David Billings**
PHONE: **760-579-3191**
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 **CONNECTION HOUSING DOWNTOWN LP**, hereinafter referred to as CLIENT. This AGREEMENT between the parties consists of these TERMS, the attached Proposal identified as Project No. **P-20276** dated **May 13, 2011**, 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.

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 one-and-one-half (1.5) percent 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 judgment on a comparative reasonability basis under comparative negligence principles (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.

DISPUTES 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.

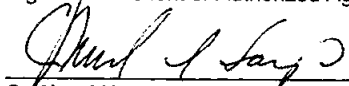
GOVERNING LAW AND SURVIVAL

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



C. Wood Hays, Principal Environmental Manager

Date

05/13/11

Date

PM: JBP

Exhibit B: Restricted Area

