

**ADDENDUM TO CONTRACT NO. ACON41313
FOR MATERIAL MANAGEMENT PROCUREMENT**

THIS ADDENDUM TO CONTRACT NO. ACON41313 FOR MATERIAL MANAGEMENT PROCUREMENT (“Addendum”) is made and entered into this 21st day of April, 2015, by and between the City of Maricopa, Arizona, an Arizona municipal corporation (“City”), and Ninyo & Moore Geotechnical Consultants, Inc., a California Corporation (“Contractor”), for materials testing services for the Public Works and Fire Maintenance Facility ("Project").

WHEREAS, City desires to retain a contractor for the Project and to make payment for the same in accordance with the terms and conditions set forth in the cooperative contract known as Contract No. ACON41313, entered into between the City of Peoria and Contractor on September 17, 2013 ("Contract"), and as modified by this Addendum, including all attachments, which are incorporated herein by mutual agreement of the parties; and

WHEREAS, in procuring the work, City has complied with the cooperative purchasing procedures set forth in Section 3-223 of the City of Maricopa’s City Code; and

WHEREAS, the parties now desire to amend the Contract to provide for materials testing services for the Public Works and Fire Maintenance Facility.

NOW, THEREFORE, City agrees to retain and does hereby retain Contractor, and Contractor agrees to provide the materials and work required for the Project according to the terms and conditions and for the consideration set forth in the Contract, which shall be amended as follows:

I. All references to “CITY”, "CITY OF PEORIA," and "PEORIA" in the Contract shall refer to the City of Maricopa, Arizona, an Arizona municipal corporation. All reference to "MARICOPA COUNTY" in the Contract shall refer to Pinal County.

II. Section 3 of the Standard Terms and Conditions of the Contract shall be amended to reflect that this Addendum shall be governed by the laws of the State of Arizona and any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in the Contract or this Addendum shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of the Contract or this Addendum or to recover any damages for and on account of the breach of any term or condition in the Contract or this Addendum, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys’ fees, necessary witness fees and court costs to be determined by the court in such action.

III. Section 26 of the Special Terms and Conditions of the Contract shall be amended to reflect that invoices shall be submitted to the City of Maricopa Finance Department, 39700 W Civic Center Plaza, Maricopa, Arizona 85138.

IV. Section 1.03 of the Scope of Work of the Contract shall be amended to reflect that compensation for the Project shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. In no event, shall the total compensation under the Contract and this Addendum exceed FIFTY FIVE THOUSAND EIGHT HUNDRED SIXTY FOUR AND 70/100 DOLLARS (\$55,864.70), which included a bid price of Forty Eight Thousand Five Hundred Seventy Eight and 00/100 Dollars and a contingency amount of Seven Thousand Two Hundred Eighty Six and 70/100 Dollars. Exhausting the total amount payable for activities described in the Contract and this Addendum shall not relieve Contractor of its obligations to perform such work. Should City request additional materials or work beyond that specified herein, Contractor shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Contractor providing the additional material or performing the additional work. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof. The prices shall be less than or equal to the prices listed in the Contract and quantities shall be as required by City.

V. Section 2 of the Scope of Work of the Contract shall be amended to include the services set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

VI. The Contract shall be amended to include the following new sections:

A. Any notice to be given shall be deemed to have been given when personally served or when mailed by certified or registered mail to the following:

If to City:

City of Maricopa
Attn: City Manager
39700 West Civic Center Plaza
Maricopa, AZ 85138

If to Contractor:

Ninyo & Moore
Attn: Steven Lorenzo
3202 East Harbour Drive
Phoenix, AZ 85034

B. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Contractor shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Contractor. The results of the arbitration shall be nonbinding on the parties,

and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

C. If any part, term or provision of the Contract or this Addendum shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

VII. All other terms and conditions of the Contract are to continue in full force and effect as stated and agreed to in the Contract.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their duly authorized representatives as of the day and year first above written.

CONTRACTOR:

Ninyo & Moore Geotechnical Consultants, Inc.

By: _____
Title: _____

CITY OF MARICOPA
An Arizona municipal corporation

Christian Price
Mayor

ATTEST:

APPROVED AS TO FORM:

Vanessa Bueras,
City Clerk

Denis M. Fitzgibbons,
City Attorney

EXHIBIT A
SCOPE OF WORK
AND
COMPENSATION