

## PROFESSIONAL SERVICES AGREEMENT

This agreement ("Agreement") is made as of March 2, 2020, by and between the **City of Commerce**, a municipal corporation ("City") and **Nelson/Nygaard Consulting Services** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

### RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor providing the services set forth in the Scope of Services attached hereto as **Exhibit A**; and

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

**1. Company's Scope of Services.** The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

**2. Term of Agreement.** This Agreement shall commence on March 2, 2020 (the "Commencement Date") and shall remain and continue in effect until tasks described in **Exhibit A** are completed, but in no event later than December 31, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

**3. Compensation.**

A. City agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall submit proper monthly invoices in the form and manner reasonably specified by City. Each invoice shall include a monthly breakdown of all monthly services performed together with the hours spent on each service. Consultant shall maintain appropriate and necessary documentation supporting the monthly invoices detailing the type of service provided. It shall be available for review by the City at all reasonable times upon request. City shall pay Consultant the amount set forth in each such invoice within forty-five (45) days of receipt.

B. Total payment to Consultant pursuant to this Agreement shall not exceed Ninety-Nine Thousand Six Hundred Sixty-Eight (\$99,668).

C. If at the request of the City, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging), Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the City's written authorization for Consultant to incur such expenses or are included in Exhibit A; and (III) receipts documenting such expenses.

**4. General Terms and Conditions.** The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

**5. Addresses.**

**City of Commerce**

City of Commerce 2535 Commerce  
Way  
Commerce, CA 90040  
Attn: Edgar P. Cisneros, City Manager

**Company**

Nelson Nygaard Consulting Services  
Attn: Thomas Wittmann, Principal  
811 First Avenue, Suite 610  
Seattle, WA 98101

**6. Exhibits.** All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

**Exhibit A** – Scope of Services and Compensation Schedule

## EXHIBIT A

January 15, 2020

We are pleased to offer the following proposal to assist the City of Commerce with the evaluation and design of the municipal bus lines. We are very excited about the opportunity to work on this project.

### SCOPE OF WORK

#### TASK 1 PROJECT MANAGEMENT

##### ***Task 1.1 Kickoff Meeting***

As standard practice, Nelson\Nygaard recommends beginning projects with a kickoff meeting to bring together City of Commerce staff and the consultant team. This initial meeting serves multiple purposes from our perspective:

- Meet City points of contact who will have a significant role in the project
- Clarify project expectations, work products, project management, and reporting procedures
- Discuss project goals in terms of community priorities and needs
- Discuss opportunities to obtain available data
- Identify stakeholders to engage during the project
- Plan immediate next steps and discuss first deliverable.

##### ***Task 1.2 Ongoing Project Management***

Nelson\Nygaard will set up ongoing communication protocols to ensure that City of Commerce staff are kept up to date on progress and that any questions that arise may be answered in a timely manner. We recommend bi-weekly phone calls to take place between the consultant team and City staff. In addition, a progress report will be provided with each monthly invoice describing the activities that took place and the work accomplished during that time period.

#### TASK 2 PUBLIC INVOLVEMENT

##### ***Task 2.1 Public Involvement Plan***

Following the kickoff meeting, Nelson\Nygaard will work with City of Commerce to develop a public involvement plan reflecting desired stakeholders to engage, protocols for developing public facing materials, publicizing community engagement events, and coordinating meeting logistics. The PIP will clearly define roles and responsibilities between the consultant team and City of Commerce, but generally, it is our expectation that the consultant team will develop materials (posters, flyers, presentations, etc) and facilitate meetings, while the City will secure meeting locations, correspond with stakeholders, and coordinate publicity and advertising of meetings and surveys.

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### **Task 2.2 Stakeholder Interviews**

In collaboration with City of Commerce staff, we will identify stakeholders to interview during the initial project stages. These stakeholders may include elected officials, city staff, medical centers, schools, chambers of commerce, developers, major employers (such as the Commerce Casino and the Citadel Outlets), and human service agencies. To encourage participants to speak frankly during interviews, our typical approach is to ensure participants their comments are anonymous and present results so that comments are not attributed to specific individuals but are instead are presented by theme. We propose conducting up to five interviews with individuals or groups, to be completed by phone prior to developing any recommendations. Nelson\Nygaard will develop an interview guide with the input of City of Commerce staff and deliver a written summary of findings with the Existing Conditions report in Task 3.

### **Task 2.3 Public Meetings**

The public meetings will take place following the completion of the existing conditions (Task 3) and then again following the development of service concepts (Task 4). We propose conducting two meetings during each round to accommodate a range of work schedules and locations in the city. The first meetings will be focused around collecting comments on needs and desires for transit service in Commerce. The second round of meetings will present a set of potential service concepts to the community on which they can provide their input. These meeting will be conducted in conjunction with the Online Survey (Task 2.4) and help inform the selection of a preferred service concept. Nelson\Nygaard will prepare presentation materials and facilitate the meetings. City of Commerce will be responsible for securing meeting locations and publicizing the meetings.

### **Task 2.4 Online Survey**

The route concepts developed in Task 4.1 will be incorporated into an online survey to allow the community to provide input on what they do and do not like about each potential service concept. The online survey will be launched prior to the public meeting. Nelson\Nygaard will work with City of Commerce staff to promote the online survey. We suggest that Staff utilize some or all of following methods:

- Publicize survey link in a city-wide utility mailer or monthly e-newsletter
- Send press release to local newspaper
- Post survey link of City website and social media pages

Results of the survey will be analyzed and used to inform the refinement of a preferred concept and documented in the final report.

Deliverables:   Public Involvement Plan  
                      Public Involvement Summary

## **TASK 3 EVALUATE EXISTING CONDITIONS**

### **Task 3.1 Ridership Assessment**

Nelson\Nygaard will analyze the City's APC and AVL data for all routes in order to understand existing rider travel patterns and major trip generators at the stop and trip level. It is assumed that

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the City can provide average daily boarding and alighting data by stop, trip, and day type. In addition, it is assumed that the City can provide on-time performance data by route segment.

In addition, Nelson\Nygaard will collect ridership data for LA Metro Lines 762, 62, 108, 258, 260, and any other lines serving Commerce. If available, Nelson\Nygaard will obtain ridership data from Montebello Bus Lines for Routes 30 and 50.

### **Task 3.2 On-Board Survey**

Nelson\Nygaard will conduct an on-board survey in order to gain an understanding of customer satisfaction, rider demographics, and desired service improvements. We will work with City staff to develop a survey instrument. Survey data will be tabulated and summarized using charts and narrative.

### **Task 3.3 Transit Service Analysis**

Nelson\Nygaard will review existing performance data on the City of Commerce routes and dial-a-ride service. Nelson\Nygaard will request the following datasets from the City of Commerce to complete this analysis:

- Average weekday, Saturday, and Sunday boardings by route/trip/service
- Average weekday, Saturday, and Sunday revenue hours by route/trip/service
- Operating cost by route
- Customer requests (call records – if available)
- Historical ridership and revenue hours by route (past 5 years)

These data sets as well as data collected in Task 3.1 will be summarized through maps, charts, and tables to depict the performance characteristics of each service, and highlight the challenges and opportunities within the existing service structure.

Another focus of this analysis will be to understand how Commerce Municipal Bus Lines services function in the larger regional context. We will document how City of Commerce's policies compare to neighboring and regional transit providers in order to identify how transit riders may travel using the City of Commerce services, as well as the range of travel choices that are available for local and regional trips.

### **Task 3.4 Review of Existing Plans and Study Documents**

We will review plans and studies relevant to the Comprehensive Operational Analysis, including previously completed transit plans for the City of Commerce, the city's comprehensive plan, specific plans, regional transit studies such as LA Metro's NextGen service plan, and others as recommended by City staff. In addition, planned development that may have an impact on the transit market in Commerce will be requested from City staff and documented.

### **Task 3.5 Market Analysis**

In order to understand the market for transit in Commerce, Nelson\Nygaard will create maps of population and employment density, as well as concentrations of demographic characteristics such as youth, seniors, renters, zero car households, and household income, which can indicate a propensity to use transit. These maps will be compared against the existing route structure in order to identify gaps or opportunities to improve service.

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Task 3 will culminate in a technical memorandum that details the findings of the analyses described above.

Deliverables: Existing Conditions Technical Memorandum

### TASK 4 DEVELOP SERVICE CONCEPTS

#### **Task 4.1** *Develop Goals and Objectives*

Before setting out to develop recommendations for improving Commerce services it is crucial that the project team understands the goals and objectives of Commerce in the short-, mid-, and long-term timeframe. To do so, Nelson\Nygaard proposes to hold a workshop with City of Commerce staff to discuss the feedback collected during stakeholder and public meeting conversations, as well as the technical findings from the Existing Conditions to develop the goals and objectives for each time frame. A service restructure can be designed to meet goals such as increased ridership or expanded service coverage, but typically cannot address all desires simultaneously, especially within a constrained budget. A summary of the staff workshop and relevant input from the first phase of public involvement will be developed to describe the process through which each set of goals and objectives was developed.

#### **Task 4.2** *Route Concepts*

Following the goal setting workshop, Nelson\Nygaard will develop service concepts for redesigning fixed route and dial-a-ride to better meet the needs of the community. Nelson\Nygaard proposes a workshop with City of Commerce staff in which Nelson\Nygaard will present initial service concepts and provide staff an opportunity to collaborate in the development of up to three sets of route-change concepts. Service concepts will consider route alignment, frequency, span, estimated operating costs, and vehicle needs. Following the workshop, the initial three service concepts will be delivered to City staff to review using maps and brief descriptive narrative. Once staff has approved the initial three service concepts, they will be presented to the community through the online survey and public meeting discussed in Task 2.3 and Task 2.4.

#### **Task 4.3** *Preferred Concept*

Based on feedback from City staff, the online survey, and the public meetings, Nelson\Nygaard will develop a preferred service concept. The preferred concept will be documented including a service map and detailed operating plan in the final report.

Deliverables: Goals and Objectives Memo, including summary of workshop  
Draft Route Concepts Memo

### TASK 5 SUPPORTING RECOMMENDATIONS

Our comprehensive evaluation of the Commerce transit system and public engagement efforts will likely reveal opportunities for investments, policy changes, or additional planning efforts beyond service delivery. Based on our findings, we will conduct research and develop recommendations for up to three additional topic areas. Examples of these topics include:

- **Operations and maintenance facilities:** Are the existing facilities sufficient? Do additional

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- **Passenger facilities:** Do bus stops meet the needs of passengers? Does the city need to implement a system for bus stop improvements? Are there specific transfer points or transit centers that need improvement either for operations or passenger comfort? Are there specific intersections, streets, or sidewalks that need pedestrian enhancements to facilitate access?
- **Vehicles:** Does the existing fleet meet the community's needs? Is there a desire to look at other vehicle sizes? Is the City prepared to convert its fleet to electric vehicles in line with state requirements?
- **Funding:** Is there a need to diversify or expand funding for transit in order to meet the community's needs? How can this best be accomplished through grants at the local, state, and federal levels? Are there partners in the community who can be engaged to support transit?
- **New service types:** Are there areas in Commerce that could benefit from non-traditional service models? Where are they and what should the City do to further understand the feasibility of these models?
- **Public information/branding:** Does the City successfully communicate to existing and potential customers? Are print, digital, and posted materials easy to find and understand? How can the City better integrate its communication channels with mobile technologies?

Nelson\Nygaard will confirm which of these topics are most important the City staff and develop three short memorandums to address those that are chosen. Supporting recommendations will be incorporated into the final report.

Deliverables: Draft Supporting Recommendation Memorandums

### TASK 6 FINAL REPORT

#### **Task 6.1 Draft Report**

Nelson\Nygaard will develop a draft report which documents the technical analysis, three initial service concepts, and basis for recommendation of the preferred service concept. The draft report will be delivered to City of Commerce staff for review.

#### **Task 6.2 Final Presentation**

Following review by City staff, Nelson\Nygaard will present the preferred service concept to either key stakeholders or Council.

#### **Task 6.3 Final Report**

Following the presentation of the preferred service concept to key stakeholders/City Council, Nelson\Nygaard will make revisions to the draft report based on feedback received from city leaders and one set of non-conflicting comments from City staff, and deliver a Final Report.

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### SCHEDULE AND FEES

The following tentative schedule represents a minimum six-month timeline assuming a February 2020 start date. We typically suggest avoiding conducting public engagement in summer months, so a later start date could extend the project schedule through Fall 2020 to ensure that the second round of public engagement does not occur in the middle of summer.

Figure 1 Proposed Schedule

Task	Description	February				March					April				May				June					July			
		3	10	17	24	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	6	13	20	27
<b>1</b>	<b>Project Management</b>																										
1.1	Kickoff Meeting	■																									
1.2	Ongoing Project Management	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>2</b>	<b>Public Involvement</b>																										
2.1	Public Involvement Plan		■	■																							
2.2	Stakeholder Interviews					■	■																				
2.3	Public Meetings							■	■										■	■							
2.4	Online Survey															■	■	■	■								
<b>3</b>	<b>Evaluate Existing Conditions</b>																										
3.1	Ridership Assessment		■	■	■	■																					
3.2	On-Board Survey				■	■																					
3.3	Transit Service Analysis					■	■																				
<b>4</b>	<b>Develop Service Concepts</b>																										
4.1	Develop Goals and Objectives										■	■															
4.2	Route Concepts											■	■	■	■												
<b>5</b>	<b>Supporting Recommendations</b>																										
5.1	Supporting Recommendations																			■	■	■					
<b>6</b>	<b>Final Report</b>																										
6.1	Draft Report																							■	■		
6.2	Final Presentation																									■	
6.3	Final Report																										■

**Commerce Transit Service Evaluation**  
City of Commerce

**EXHIBIT A**

**Figure 2 Proposed Budget**

Task Description	Nelson\Nygaard Labor Costs							Subconsultant Costs				Total Labor Hours	Total Labor Costs	Total Travel Expenses	Total Misc. Expenses	Total Direct Expenses	Total Costs
	Thomas Wittmann	Hazel Scher Senior	Ulises Hernandez-Jimenez	Jae Riddle	Michael Carraher	Jungwha Yuh	NN Labor Hours	NN Labor Cost	Temps, Inc								
	Principal 5	Associate 2	Associate 1	Associate 1	GIS Analyst	Designer			Surveyor On-Board	Temps, Inc Labor							
	Base Rate	Overhead	Profit	Total Billing Rate	86.66	53.30			29.81	28.23	33.08						
<b>1 Project Management</b>																	
1.1 Kickoff Meeting		8	8					16	\$3,606		0	\$0	16	\$3,606			\$3,606
1.2 Ongoing Project Management			16	12				28	\$3,898		0	\$0	28	\$3,898			\$3,898
<b>Task Total</b>		<b>8</b>	<b>24</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>44</b>	<b>\$7,504</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>44</b>	<b>\$7,504</b>	<b>\$850</b>	<b>\$0</b>	<b>\$850</b>
<b>2 Public Involvement</b>																	
2.1 Public Involvement Plan			2		4			6	\$707		0	\$0	6	\$707			\$707
2.2 Stakeholder Interviews			8		12			20	\$2,464	189	189	\$3,969	209	\$6,433			\$6,433
2.3 Public Meetings			24		32		8	64	\$7,880		0	\$0	64	\$7,880			\$7,880
2.4 Online Survey			4	16				20	\$2,222		0	\$0	20	\$2,222			\$2,222
<b>Task Total</b>		<b>0</b>	<b>38</b>	<b>16</b>	<b>48</b>	<b>0</b>	<b>8</b>	<b>110</b>	<b>\$13,274</b>	<b>189</b>	<b>189</b>	<b>\$3,969</b>	<b>299</b>	<b>\$17,243</b>	<b>\$300</b>	<b>\$2,000</b>	<b>\$2,300</b>
<b>3 Evaluate Existing Conditions</b>																	
3.1 Ridership Assessment			8	80				88	\$9,052		0	\$0	88	\$9,052			\$9,052
3.2 On-Board Survey		2	24	4	16		4	50	\$6,942		0	\$0	50	\$6,942			\$6,942
3.3 Transit Service Analysis		2	16	56				74	\$8,680		0	\$0	74	\$8,680			\$8,680
3.4 Review of Existing Plans and Study Documents			4		16			20	\$2,141		0	\$0	20	\$2,141			\$2,141
3.5 Market Analysis			4				16	20	\$2,391		0	\$0	20	\$2,391			\$2,391
<b>Task Total</b>		<b>4</b>	<b>56</b>	<b>140</b>	<b>32</b>	<b>16</b>	<b>4</b>	<b>252</b>	<b>\$29,206</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>252</b>	<b>\$29,206</b>	<b>\$300</b>	<b>\$500</b>	<b>\$800</b>
<b>4 Develop Service Concepts</b>																	
4.1 Develop Goals and Objectives		4	8		8			20	\$3,217		0	\$0	20	\$3,217			\$3,217
4.2 Route Concepts		16	24	12		16		68	\$11,440		0	\$0	68	\$11,440			\$11,440
4.3 Preferred Concept		4	8	8		8		28	\$4,109		0	\$0	28	\$4,109			\$4,109
<b>Task Total</b>		<b>24</b>	<b>40</b>	<b>20</b>	<b>8</b>	<b>24</b>	<b>0</b>	<b>116</b>	<b>\$18,766</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>116</b>	<b>\$18,766</b>	<b>\$1,175</b>	<b>\$0</b>	<b>\$1,175</b>
<b>5 Supporting Recommendations</b>																	
5.1 Supporting Recommendations		2	8	16	16			42	\$4,922		0	\$0	42	\$4,922			\$4,922
<b>Task Total</b>		<b>2</b>	<b>8</b>	<b>16</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>42</b>	<b>\$4,922</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>42</b>	<b>\$4,922</b>	<b>\$400</b>	<b>\$0</b>	<b>\$400</b>
<b>6 Final Report</b>																	
6.1 Draft Report		4	24	24	24	8	8	92	\$11,425		0	\$0	92	\$11,425			\$11,425
6.2 Final Presentation		2	8		4			14	\$2,295		0	\$0	14	\$2,295			\$2,295
6.3 Final Report		2	8				8	18	\$2,783		0	\$0	18	\$2,783			\$2,783
<b>Task Total</b>		<b>8</b>	<b>40</b>	<b>24</b>	<b>28</b>	<b>8</b>	<b>16</b>	<b>124</b>	<b>\$16,503</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>124</b>	<b>\$16,503</b>	<b>\$0</b>	<b>\$0</b>	<b>\$16,503</b>
<b>TOTAL HOURS</b>		<b>46</b>	<b>206</b>	<b>228</b>	<b>132</b>	<b>48</b>	<b>28</b>	<b>688</b>		<b>189</b>	<b>189</b>		<b>877</b>				
<b>TOTAL COST</b>		<b>\$12,837</b>	<b>\$35,356</b>	<b>\$21,886</b>	<b>\$11,999</b>	<b>\$5,113</b>	<b>\$2,983</b>		<b>\$90,174</b>	<b>\$3,969</b>		<b>\$3,969</b>		<b>\$94,143</b>	<b>\$3,025</b>	<b>\$2,500</b>	<b>\$5,525</b>

## **Exhibit B – General Terms and Conditions**

### **GENERAL TERMS AND CONDITIONS**

#### **1. Status as Independent Contractor.**

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City of Commerce or otherwise act on behalf of Commerce as an agent. Neither the City of Commerce nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City of Commerce.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interests asserted against City by reason of the independent Consultant relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the City, and City relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the City. Neither the City nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. The City has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the City will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the City harmless for any and all taxes, claims, and penalties against the City related to Consultant's obligations under the Affordable Care Act.

#### **2. Standard of Performance**

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

### **3. Indemnification.**

A. Consultant is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of Consultant to perform said services and duties.

B. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnities") Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnities may suffer or incur or to which Indemnities may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring caused by Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Consultant, its agents, officers, directors, subcontractor, sub consultant or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each subcontractor, sub consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required in this Section, Consultant agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way serve as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to City.

### **4. Insurance.**

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, \$2,000,000 products/completed operations aggregate. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended.

(II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident, \$1,000,000 bodily injury by disease – each employee, \$1,000,000 bodily injury by disease - policy limit for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers damages to the extent caused by the negligent acts, errors and omissions for the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise reasonably approved by the City's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be canceled by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof, except ten (10) days' notice for non-payment of premium. Any such thirty (30) day notice shall be submitted to CITY addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage below the requirements set forth in this Agreement.

E. Consultant shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement.

F. Consultant's commercial general liability and automobile liability insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

## **5. Release of Information/Confidentiality.**

A Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to be present at any deposition, hearing, or similar proceeding. To the extent legally permissible, Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **6. Ownership of Work Product.**

A Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## **7. Conflict of Interest.**

A Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder.

Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

**8. Termination.** Notwithstanding any other provision, this Agreement may be duly terminated at any time by the City at its sole discretion with or without cause by serving upon the consultant at least thirty (30) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the City, the City shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the City its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to City the product of the services in accordance with written instructions of City.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City.

**9. Personnel.** Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing services on City's premises.

**10. Non-Discrimination and Equal Employment Opportunity.**

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

**11. Assignment.** Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of City, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**12. Performance Evaluation.** For any Agreement in effect for twelve months or longer, the City Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

**13. Compliance with Laws.** Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

**14. Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

**15. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**16. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

**17. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**18. Governing Law.** This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**20. Severability.** If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

**21. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

**22. Authority.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**SIGNATURE ON NEXT PAGE**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

**CITY**

**CITY OF COMMERCE**

By: \_\_\_\_\_  
John Soria, Mayor

\_\_\_\_\_  
Date

**CONSULTANT**

**Nelson/Nygaard Consulting Services**

By: \_\_\_\_\_  
Thomas Wittmann, Principal

\_\_\_\_\_  
Date

**ATTEST:**

By: \_\_\_\_\_  
Lena Shumway, City Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Noel Tapia, City Attorney

\_\_\_\_\_  
Date