



## AGENDA REPORT

**Meeting Date:** May 7, 2013  
**Item Number:** F-11  
**To:** Honorable Mayor & City Council  
**From:** Chad Lynn, Director of Parking Operations  
**Subject:** AGREEMENT WITH NELSON/NYGAARD CONSULTING ASSOCIATES, INC. FOR CONSULTANT SERVICES RELATED TO A REQUEST FOR PROPOSALS AND THE IMPLEMENTATION OF A TAXICAB FRANCHISE PROGRAM; AND APPROVAL OF A PURCHASE ORDER AND APPROVAL OF AN APPROPRIATION OF FUNDS IN THE AMOUNT OF \$85,000 FOR THESE SERVICES

**Attachments:** 1. Agreement

---

### RECOMMENDATION

Staff recommends that the City Council move to appropriate funds in the amount of \$85,000 as follows:

From:  
General Fund, Account number  
01-30000

To:  
General Fund, Account number  
01-07301-73210

and that the City Council move to approve an agreement between the City of Beverly Hills and Nelson/Nygaard Consulting Associates, Inc. in an amount not to exceed \$85,000 for the creation and implementation of a taxicab franchise program.

### INTRODUCTION

Staff was directed by the City Council at the Study Session of February 5, 2013, to immediately pursue the creation and implementation of a taxicab franchise program.

The proposed agreement will begin this process by retaining the specialized consultant services of Nelson/Nygaard Consulting Associates, Inc. to develop the ordinances, scope of work and request for proposal documents necessary to execute this program.

## **DISCUSSION**

The City retained Nelson/Nygaard Consulting Associates Inc. to conduct the taxicab services study presented to the City Council at the Study Session of February 5, 2013. This consultant has national and regional experience in taxicab studies and the conversion to franchise programs from various other regulatory methods.

Staff is recommending retaining this consultant again to use the information presented at the February 5<sup>th</sup> meeting and develop the necessary documentation and policies needed to complete the implementation of a taxicab franchise program.

The general scope of work for this agreement will be the following:

- Scoping Meetings with Community Members, City Staff, Commissions, City Council, and Taxicab Service Providers
- Assistance with Ordinance Changes
- Transition and Implementation Plan
- Development of the Taxicab Franchise Scope-of-Work
- Provide Technology and Integration Recommendations
- Enforcement Programs to Compliment Franchise Agreements
- Development of the Request for Proposals
- Initial Review and Evaluation of Request for Proposals for Compliance and Accuracy

Payment for services and approved expenses will be directly associated with the completion of scheduled tasks and delivery of the work product.

Since the taxicab market is a highly specialized industry and staff's experience is limited to the administration of the current Certificate of Public Necessity and Convenience, it is highly recommended that outside expertise be retained to properly develop and implement this program.

## **FISCAL IMPACT**

Funds were not budgeted but are available for appropriation from the unrestricted fund balance of the General Fund to the Parking Enforcement Program in the amount of \$85,000.

Don Rhoads  
Finance Approval



Mahdi Aluzri  
Approved By



# **Attachment 1**

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
NELSON/NYGAARD CONSULTING ASSOCIATES INC. FOR  
CONSULTANT SERVICES RELATED TO A REQUEST FOR  
PROPOSALS AND THE IMPLEMENTATION OF A TAXICAB FRANCHISE  
PROGRAM

NAME OF CONSULTANT: Nelson/Nygaard Consulting Associates Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: David Koffman, Principal

CONSULTANT'S ADDRESS: 116 New Montgomery Street, Suite 500  
San Francisco, CA., 94105  
Attention: David Koffman, Principal

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: David Gustavson, Director of Public  
Works & Transportation

COMMENCEMENT DATE: April 19, 2013

TERMINATION DATE: December 31, 2013

CONSIDERATION: \$ 85,000.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
NELSON/NYGAARD CONSULTING ASSOCIATES INC. FOR  
CONSULTANT SERVICES RELATED TO A REQUEST FOR  
PROPOSALS FOR THE IMPLEMENTATION OF A TAXICAB FRANCHISE  
PROGRAM

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Nelson/Nygaard Consulting Associates Inc. (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

Section 3. Compensation.

(a) Compensation. CITY agrees to compensate CONSULTANT for the services and/or goods provided under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services the Consideration set forth above.

(b) Expenses. The amount set forth in paragraph (a) shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) Additional Services. CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Work. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. Unless otherwise provided for herein, CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. 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 CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s).

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single

limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 17. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 18. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 20. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. City Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 23. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS,  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_  
BYRON POPE  
City Clerk

CONSULTANT: NELSON/NYGAARD  
CONSULTING ASSOCIATES INC.

\_\_\_\_\_  
BONNIE NELSON,  
President

\_\_\_\_\_  
JEFF TUMLIN  
Secretary

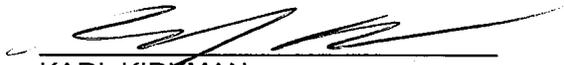
APPROVED AS TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

\_\_\_\_\_  
MAHDI ALUZRI  
Acting Director of Public  
Works & Transportation



KARL KIRKMAN  
Risk Manager

## EXHIBIT A

### SCOPE OF WORK

CONSULTANT shall perform the following services in connection with Request for proposals and the implementation of a taxi cab franchise program:

- Scoping Meetings with Community Members, City Staff, Commissions, City Council, and Taxicab Service Providers
- Assistance with Taxi Franchise Program and related Ordinance Changes
- Transition and Implementation Plan for the Taxi Franchise Program
- Development of the Taxicab Franchise Scope-of-Work
- Provide Technology and Integration Recommendations
- Enforcement Programs to Compliment Franchise Agreements
- Development of the Request for Proposals
- Initial Review and Evaluation of Request for Proposals for Compliance and Accuracy

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

Payment for services shall be directly associated with the satisfactory completion of the following scheduled tasks and delivery of the work product associated with each task.

Scheduled Tasks	Payment
Scoping Meetings with Community Members, City Staff, Commissions, City Council, and Taxicab Service Providers	15%
Assistance with Ordinance Changes	5%
Transition and Implementation Plan	5%
Development of the Taxicab Franchise Scope-of-Work	15%
Provide Technology and Integration Recommendations	10%
Enforcement Programs to Compliment Franchise Agreements	15%
Development of the Request for Proposals	15%
Initial Review and Evaluation of Request for Proposals for Compliance and Accuracy	20%
	100% (\$85,000)

EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

**NAMED INSURED**

**COMPANIES AFFORDING COVERAGE**

**ADDRESS**

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : \_\_\_\_\_ BY : \_\_\_\_\_  
 \_\_\_\_\_  
 Authorized Insurance Representative

TITLE : \_\_\_\_\_  
 AGENCY : \_\_\_\_\_ Address : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_