

**STAFF REPORT**

**DATE:** February 20, 2018

**TO:** City Council

**FROM:** Dianna Jensen, City Engineer  
Brian Abbanat, Senior Transportation Planner

**SUBJECT:** Approve Consultant Services Agreement with Nelson/Nygaard for Downtown Paid Parking, CIP No. 8252

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**Recommendation**

1. Approve a Consultant Services Agreement with Nelson/Nygaard for Professional Consulting Services for Downtown Paid Parking; and
2. Approve the attached Resolution authorizing the City Manager to sign the Consultant Services Agreement; and
3. Approve the attached Budget Adjustment.

**Fiscal Impact**

The cost of this phase will not exceed \$165,000. The estimated cost for the design phase follows:

<b>Purpose</b>	<b>Amount</b>	<b>Funding Source</b>
Consulting Services	\$145,000	Fund 209 (Parking Revenue Fund)
Staff Project Management	\$20,000	
<b>Total</b>	<b>\$165,000</b>	

This amount reflects Nelson/Nygaard consulting fee at \$139,977, \$5,023 in contingency costs for unforeseen scope of work needs, and \$20,000 in anticipated staff project management costs. Downtown Parking Revenue Funds (Fund 209) are available for this effort.

Prior parking allocations for Downtown parking have been for Staff time, construction of the Richards/Olive parking lot, and Downtown parking guidance system. No prior allocations have occurred for paid parking specifically, as City Council recently finalized a preferred course of action in November, 2017. This request launches the first phase (Design) and the remainder for construction will be proposed in the FY 2018/19 budget.

**Council Goals**

This project supports the Council Goal 4, Objective 1, Task A to support increased parking availability by implementing City Council adopted Downtown Parking Task Force Recommendations.

**Background and Analysis**

In November 2017, City Council took action to:

1. Approve Proposed Revisions for expansion of Downtown paid parking and revisions to time-restricted parking; and
2. Direct Staff to return to City Council with Ordinances, Resolutions, and Contracts implementing revisions.

Councilmembers also suggested exploration of “Affinity” or reward/validation programs, emphasizing convenience for visitors, utilizing a tiered and flexible pricing structure, and deploying meter technology that best accomplishes these objectives.

While City Council focused on “big picture” paid parking policy priorities such as geography and time restricted parking, several important second-tier policy issues require additional analysis to resolve. Thus, a final implementation planning phase guided by consultant expertise is needed for fully informed decision making to prior deploying paid parking in the field. Upon completion of this implementation planning phase, Staff anticipates bringing final recommendations on the below topics to City Council for a smooth transition toward paid parking in the downtown southeast quadrant.

1. Policy Recommendations:
  - Peer review of 11/7/18 City Council paid parking action
  - Paid parking technology
  - Pricing structure
  - Administrative and enforcement staffing
  - Municipal Code revisions
  - Cost/revenue analysis
2. Project Design
  - Striping and compliance with Americans with Disabilities Act
  - Equipment
3. Community Outreach
  - Davis Downtown Parking Committee meetings
  - Community Outreach Plan

### **Justification for Selection**

Ordinarily, City Staff would need to coordinate this work across three departments: Public Works, Police, and Finance. However, due to organizational bandwidth and time required to complete this analysis in-house, Staff proposes using consulting assistance to save time while benefitting from their expertise in this area.

When consulting assistance is needed, Requests for Proposals (RFPs) are commonly used. However, in this circumstance, Staff proposes an agreement with Nelson/Nygaard (N/N), who is currently a sub-consultant for the Core Area Specific Plan (CASP) update. N/N is preferred to coordinate implementation of paid parking with the development of land use and parking policies for the CASP update. Additionally, N/N has developed a unique understanding of local parking conditions as a result of their extensive work on the CASP to date, including using their downtown parking model to help inform this analysis. Finally, substantial project time and Staff resources will be saved through this selection method.

**Fiscal Background**

Over the past four years, several paid parking cost estimates have been provided to City Council, which have been largely dependent on geography, meter technology, and other factors. For capital project planning purposes, the below table provides the most current upfront capital cost assumptions Staff can provide based on the November 2017 City Council action, assuming on-street single-space meters and off-street multi-space meters. N/N will conduct a more detailed cost/revenue analysis as part of this effort, likely resulting in revisions to these figures.

Category	Cost Item	Cost	Source	Notes
	<i>Implementation Planning &amp; Engineering (consultant)</i>	\$145,000	<i>Parking Revenue (209)</i>	<i>Consultant assistance &amp; staff time, subject of staff report.</i>
	<i>Implementation Planning &amp; Engineering (staff time)</i>	\$20,000		
Construction	Single-Space Meters	\$464,000	<i>Any combination of General Fund, Gas Tax, Parking Revenue, and/or Road Impact Fees (in FY 18/19 Budget)</i>	Approximately 371 meters @ approximately \$1,250 each, installed.
	Multi-Space Meters	\$63,000		Approximately 5 meters @ approximately \$12,500 each.
	ADA Improvements/Restriping	\$75,000		Allowance
	Construction Contingency	\$60,000		Formula @ 10%
Other Costs	Municipal Arts Fund	\$6,000		Formula @ 1%
	Construction Administration and Inspection	\$48,000		Formula @ 6%
<b>Total</b>		<b>\$881,000</b>		

With this Budget Adjustment, staff requests \$165,000 for the Implementation Planning & Engineering phase. Staff will return to City Council with a budget adjustment for construction costs or integrate costs into the FY 2018/19 budgeting process.

**Schedule**

Staff anticipates this phase to be completed within 4-5 months, paid parking implementation sometime near the end of summer or early fall.

**Attachments**

1. Resolution
2. Budget Adjustment
3. Consultant Services Agreement
4. 18/19 CIP No. 8252 worksheet

**RESOLUTION NO-XXX. SERIES 2018**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A  
PROFESSIONAL SERVICES AGREEMENT WITH  
NELSON/NYGAARD FOR CONSULTING SERVICES FOR  
DOWNTOWN PAID PARKING PROJECT, CIP NO. 8252**

WHEREAS, City Council's two-year goal aims to support increased parking availability by implementing City Council adopted Downtown Parking Task Force Recommendations; and

WHEREAS, in October 2014, the Downtown Parking Task Force unanimously supported a package of nineteen (19) recommendations, including establishing paid parking in the downtown; and

WHEREAS, on November 7, 2017, the City Council approved establishing paid parking in the downtown southeast quadrant, roughly bounded by First Street, Third Street, D Street and G Street; and

WHEREAS, on November 7, 2017, the City Council also supported establishing 90-minute parking restrictions for all off-street parking outside the paid parking zone; and

WHEREAS, on November 7 2017, the City Council directed staff to return to City council with Ordinances, Resolutions, and Contracts implementing revisions; and

WHEREAS, consulting assistance is needed for final implementation planning and policy recommendations including selection of paid parking technology, pricing structures, administrative and enforcement staffing, Municipal Code revisions, project design, and community outreach; and

WHEREAS, Nelson/Nygaard consulting firm was selected to coordinate implementation of paid parking with the development of land use and parking policies for the Core Area Specific Plan update, and due to their unique understanding of local parking conditions as a result of their extensive work on the CASP to date.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Davis approves the Consultant Agreement with Nelson/Nygaard in the amount of \$145,000 for the Downtown Paid Parking project, CIP No. 8252, which includes \$139,977 in direct consulting fees plus \$5,023 contingency budget.

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to enter into, and if necessary, make minor modifications, after consultation with the City Attorney, to the Consultant Agreement with Nelson/Nygaard.

PASSED AND ADOPTED by the City Council of the City of Davis on this 20th day of February 2018, by the following vote:

AYES:

NOES:

ATTEST:

Robb Davis  
Mayor

Zoe S. Mirabile, CMC  
City Clerk

F-928-20  
07/90

CITY OF DAVIS  
Request for Budget Adjustment

Agenda Item: 04C

TO: City Manager  
VIA: Finance Administrator

City Council Meeting Date: 02/20/18

FROM: Public Works

Dept Head

*PA Lawrence* 2/15/18

Signature and Date

I request the following budget adjustments:

A. Internal Transfers of Currently Appropriated Funds:

TRANSFERS FROM PROGRAM NAME	FUND NO.	DIV/ PROG.	ACTIVITY	ELEMENT/ OBJECT	AMOUNT (CR)	HOURS
Downtown Paid Parking - Other Prof Svcs	001	7234	480	01-01	20,000.00	
					.00	
					.00	
					.00	
					.00	
					20,000	

B. New Appropriation's Source of funding/Revised Revenue Change:

Unallocated Reserve	Downtown parking Fund	209	145,000
	Fund Name	Fund No.	
New/Revised Revenue Account	Revenue Account Number		

C. Allocation of Internal Transfers and/or New Appropriations:

TRANSFERS TO PROGRAM NAME	FUND NO.	DIV/ PROG.	ACTIVITY	ELEMENT/ OBJECT	AMOUNT (DR)	HOURS
Downtown Paid Parking - Wages/Salaries	001	8252	480	01-01	20,000	
Downtown Paid Parking - Other Prof Svcs	209	8252	480	4550	145,000	
					165,000	

D. Reason For Adjustment (Explain fully. Attach sheet if necessary. If new revenue, record a description on reverse side on Part VI.)  
Professional consulting services and staff time for implementation planning of downtown paid parking per City Council action on 11/7/17.  
Downtown Parking Revenue fund proposed due to direct nexus between funding source and proposed expenditures.

FINANCE DIRECTOR

A.  Funds have been appropriated & are available.

B.  Funds have been appropriated.

Funds must be appropriated.

Comments:

*[Signature]* 2/15/18  
Signature and Date

CITY MANAGER

A.  Approved  
 Disapproved

B.  City Council appropriated funds.

City Council informed of revised revenue estimate.

Comments:

Signature and Date

Date: 2/15/17 BA No. 085

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

**AGREEMENT FOR PROFESSIONAL SERVICES FOR PAID PARKING  
IMPLEMENTATION PLANNING THE DOWNTOWN PAID PARKING PROJECT, CIP  
NO. 83XX**

**THIS AGREEMENT** is made and entered into this 20<sup>th</sup> day of February, 2018, by and between the CITY OF DAVIS, a municipal corporation existing under the laws of the State of California, hereinafter referred to as “City,” and Nelson\Nygaard Consulting Associates, Inc. a California Corporation, hereinafter referred to as “Consultant.”

**RECITALS**

**WHEREAS**, Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional transportation consulting services to public clients and is familiar with the plans of the City with respect to the Project, as defined below.

**WHEREAS**, the City desires to engage Consultant to render such services in connection with the Downtown Parking Improvements project (“Project”) as set forth in this Agreement.

**NOW, THEREFORE**, City and Consultant agree as follows:

**1. SCOPE OF SERVICES AND TERM.**

1.1. Scope of Services. Consultant promises and agrees to furnish to City all labor, services, and incidental and customary work necessary to fully and adequately perform the professional services necessary for the Project (“Services”). The Services are more particularly described in **Exhibit A**. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2. Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other

materials necessary for performing the Services pursuant to this Agreement. The City shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.3. Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in **Exhibit C** and any updates to the Schedule of Services approved by the City. Time is of the essence in the performance of this Agreement. Consultant's failure to perform any Service required under this Agreement within the time limits set forth in **Exhibit C** shall constitute a material breach of this Agreement.

1.4. Term. The term of this Agreement shall begin on the date the City Council approves this Agreement and shall expire upon completion of the Services or when terminated as provided in Section 5.

## **2. PROJECT COORDINATION.**

2.1. City's Representative. The City hereby designates the City Manager to act as its representative for the performance of this Agreement. The City Manager shall have the power to act on behalf of the City for all purposes under this Agreement. The City Manager hereby designates Brian Abbanat, Senior Transportation Planner, as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2. Consultant's Representative. Consultant hereby designates Patrick Siegman, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement. Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom the City has a reasonable objection.

2.3. Coordination of Services. Consultant agrees to work closely with City staff in the

performance of the Services and shall be available to City staff at all reasonable times.

### **3. RESPONSIBILITIES OF CONSULTANT.**

3.1. Independent Contractor. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the City; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2. Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3. Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and approval. Consultant shall furnish City with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. The City's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4. Substitution of Key Personnel. Consultant has represented to the City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the City's written approval. In the event that the City and Consultant cannot agree as to the substitution of key personnel, the City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows:

- Patrick Siegman, Principal

3.5. Licenses and Permits. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City of Davis Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant's sole cost and expense.

3.6. Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California with experience performing services similar in size, scope and complexity to the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 7.2, from any claim or liability arising out

of any failure or alleged failure to comply with such laws, rules or regulations.

3.8. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.9. Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10. Insurance.

3.10.1. Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence reasonably satisfactory to the City that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence reasonably satisfactory to the City that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.10.2. Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.10.2.1. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *Commercial General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Business Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2. Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *Commercial General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit, \$2,000,000 Products/Completed Operations Aggregate; (b) *Business Automobile Liability*: \$1,000,000 combined single limit per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease..

3.10.3. Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim and aggregate.

3.10.4. Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.10.4.1. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers,

employees, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the City, its directors, officials, officers, employees, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

3.10.4.4. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (a) coverage shall not be canceled except after thirty (30) days' prior written notice has been given to the City.

3.10.5. Separation of Insureds; No Special Limitations. Commercial General Liability and Business Auto Liability insurance required herein shall contain standard separation of insureds provisions.

3.10.6. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City.

3.10.7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed or authorized to do business in California, and reasonably

satisfactory to the City.

3.10.8. Verification of Coverage. Consultant shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms reasonably satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and reasonably approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time, except with respect to Professional Liability.

3.10.9. Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.11. Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (a) adequate life protection and life saving equipment and procedures; (b) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (c) adequate facilities for the proper inspection and maintenance of all safety measures.

3.12. Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.13. Use of Recycled Paper. Consultant shall comply with the City's policy on the use of recycled paper, as set forth in **Exhibit E** of this Agreement.

#### **4. FEES AND PAYMENT.**

4.1. Compensation. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates set forth in **Exhibit D**. The total compensation shall not exceed one hundred forty-five thousand dollars (\$145,000) without written approval of the City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2. Payment of Compensation. Consultant shall submit to the City a monthly itemized statement which indicates the percentage of the project completed during the month and supplies provided during the month. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

4.3. City's Right to Withhold Payment. The City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established in the Schedule of Services (**Exhibit C**), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement on account of payment disputes with the City, provided that the City continues to make payment of undisputed amounts.

4.4. Payment Disputes. If the City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and Consultant shall attempt to resolve the disagreement. The City's payment of any amounts shall not constitute a waiver of any disagreement and the City shall promptly pay all amounts not in dispute.

4.5. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses except as specifically set forth in Exhibit D.

4.6. Extra Work. At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not

reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City Manager.

4.7. Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make available, to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services, and shall post copies at the Consultant’s principal place of business and at the Project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 7.2, from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

4.8. Living Wage Ordinance.

4.8.1. Consultant agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If Consultant employs six (6) or more employees, and receives \$25,000 or more from the City pursuant to this Agreement and any other contracts with the City during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code section 15.20.060 during the term of this Agreement.

4.8.2. Prior to commencement of any work under this Agreement, Consultant and all subconsultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subconsultants are providing all eligible employees

the minimum compensation required pursuant to Davis Municipal Code section 15.20.060.

Additionally, prior to commencement of any work, Consultant shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

4.8.3. Consultant shall maintain all records and documents necessary to establish whether Consultant is subject to Chapter 15.20. If Consultant is subject to the requirements of Chapter 15.20, Consultant shall further be required to maintain monthly records of Consultant's employees, including records showing the hourly rate paid to each employee, the amount paid by Consultant for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this section shall be made available to the City upon request. The failure to produce these records within three (3) business days following request by the City shall be a default under this Agreement.

4.8.4. Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subconsultants hired to provide services pursuant to this Agreement. Any and all subconsultants retained by Consultant to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for services provided to the City pursuant to this and any other City contracts during a 12 month period shall be required to comply with the terms of Chapter 15.20. Failure by a subconsultant subject to the requirements of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default of the Consultant under this Agreement.

## **5. SUSPENSION AND TERMINATION.**

5.1. Suspension. The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

5.2. Termination for Cause.

5.2.1. If Consultant at any time refuses or neglects to prosecute its services in a timely fashion or in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without the City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

5.2.2. If Consultant fails to cure the default within seven (7) days after written notice thereof, the City may, at its sole option, take possession of any Documents & Data (as defined in Section 6.1) or other materials (in paper and electronic form) prepared or used by Consultant in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3. In the event the City elects to terminate, the City shall have the right to immediate possession of all Documents & Data and work in progress prepared by Consultant, whether located at the Project, at Consultant's place of business, at the offices of a subconsultant, or elsewhere and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by the City in obtaining the Services for the Project exceed such unpaid balance, then Consultant shall promptly pay to the City the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by the City in causing the Services called for under this Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by the City by reason of Consultant's default or defective work.

5.3. Termination for Convenience.

5.3.1. In addition to the foregoing right to terminate for default, the City reserves the

absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by the City, plus (2) payment for Extra Work approved by the City Manager, satisfactorily completed by Consultant and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as provided for in Exhibit D and approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against the City or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2. If this Agreement is terminated by the City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

## **6. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY.**

6.1. Documents and Data; Licensing of Intellectual Property. This Agreement creates a fully paid up, exclusive and perpetual license for the City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in or arising from plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, designs, graphic representations and data, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of the City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, or at any time upon five (5) days written notice, Consultant shall provide to the City reproducible copies of all Documents & Data, in a form and quantity requested by the City. The City reserves the right to select the method of document

reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by the City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to the City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to the City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of four (4) years following completion of the Project or termination of this Agreement, whichever is earlier, and shall make copies available to the City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify the City and provide the City with the opportunity to obtain the documents.

6.2. Subconsultants. Consultant shall require all subconsultants to agree in writing that the City is granted a fully paid, non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data prepared by Consultant or its subconsultants. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

6.3. Right to Use. The City shall not be limited in any way in its use or reuse of the Documents & Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at the City's sole risk. If the City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal (if applicable) from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is

legally responsible or liable, or anyone approved by the Consultant.

6.4. Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 7.2, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by the City of the Documents & Data, including any method, process, product, or concept specified or depicted.

6.5. Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of the City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

## **7. OTHER PROVISIONS.**

7.1. Assignment; Successors. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

### 7.2. Indemnification.

7.2.1. Scope of Indemnity. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (with legal

counsel reasonably acceptable to the City) indemnify and hold harmless the City and its officers, departments, officials, representatives, and employees (collectively “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively “Liabilities”) in connection with the Project. Such obligations to defend, hold harmless and to indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

7.2.2. Termination or Completion of Agreement. Neither termination of this Agreement nor completion of the Services under this Agreement shall release Consultant from its obligations under this Section 7.2, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

7.2.3. Additional Indemnity Agreements. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth herein from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section 7.2. City’s failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

7.2.4. Successors and Assigns. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this Section.

7.2.5. Compliance with Insurance Requirements. Consultant’s compliance with the insurance requirements does not relieve Consultant from the obligations described in this Section 7.2, which shall apply whether or not such insurance policies are applicable to a claim or damages.

7.3. Consultant Not Agent. Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

7.4. Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

7.5. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Nelson\Nygaard Consulting Associates, Inc.  
116 New Montgomery Street, Suite 500  
San Francisco, CA 94105  
Attn: Paul Jewel, Managing Director

City: City of Davis  
23 Russell Boulevard  
Davis, CA 95616  
Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable

address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

7.6. Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

7.7. City's Right to Employ Other Consultants. The City reserves the right to employ other consultants in connection with this Project.

7.8. Construction; References; Captions. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

7.9. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

7.10. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

7.11. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

7.12. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

7.13. Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner

or degree with the performance of the Services under this Agreement. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having such an interest shall be employed. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

7.14. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City Clerk as required under state law in the performance of the Services. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

7.15. Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall reasonably take any additional acts or sign any additional documents (subject to reasonable rates of compensation for any such acts) as may be necessary or appropriate to attain the purposes of this Agreement.

7.16. Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

7.17. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

7.18. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

7.19. Entirety of Agreement. This Agreement contains the entire agreement of the City and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

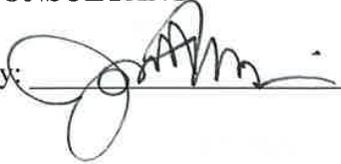
IN WITNESS WHEREOF, the City and Consultant have entered into this Agreement as of the date first stated above.

**CITY OF DAVIS**

By: \_\_\_\_\_  
Mike Webb

Its: City Manager

**CONSULTANT**

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


Its: PRINCIPAL \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Harriet A. Steiner  
City Attorney

**EXHIBIT A**

**SCOPE OF SERVICES**

1. Kickoff and Project Management
2. Analysis & Policy Recommendations:
  - Peer review of 11/7/18 City Council paid parking action
  - Paid parking technology
  - Pricing structure
  - Administrative and enforcement staffing
  - Municipal Code revisions
  - Cost/revenue analysis
3. Project Design
  - Striping and compliance with Americans with Disabilities Act
  - Equipment
4. Community Outreach
  - Davis Downtown Parking Committee meetings
  - Community Outreach Plan
5. Final Recommendations

**EXHIBIT B**

**FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY**

**Not applicable**



**EXHIBIT D**

**PAYMENT: LUMP SUM, MONTHLY ON A PERCENT COMPLETE BASIS IN  
ARREARS AFTER COSTS INCURRED**

## **EXHIBIT E**

### **USE OF RECYCLED PAPER**

All paper used for any reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as specified herein. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

#### **Definitions.**

Postconsumer Material means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purpose of collection, recycling, and disposition.

Recovered Paper Material means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wastes, cutting and other converting wastes, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standard. The following categories of paper must contain the minimum percentages of material listed under both “Recovered Material” and “Postconsumer Material” included within the total “Recovered Material” percentage. When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

<b>Paper Category</b>	<b>Minimum Percentage of “Recovered Material”</b>	<b>Minimum Percentage of “Postconsumer Material”</b>
High-speed Xerographic	50	10
Bond Paper	50	10
Cover Stock	50	10
Envelopes	50	10



## City of Davis Capital Improvement Project Planning Sheet 18/19

<b>Project Name:</b>	<u>Downtown Paid Parking</u>		
<b>Requested By:</b>	<u>PW-Transp.</u>	<b>Department</b>	<b>Department/ Division</b>
<b>CIP Project Number:</b>	<u>8252</u>	<b>Division</b>	<b>Project Manager:</b> <u>Brian Abbanat</u>
		<b>Public Works Project Manager:</b>	<u>Dianna Jensen</u>

**Project Category:**

CIP Admin.	<input type="checkbox"/>	Transportation	<input checked="" type="checkbox"/> XXX	Stormwater	<input type="checkbox"/>
Facilities	<input type="checkbox"/>	Fleet/Equip	<input type="checkbox"/>	Wastewater	<input type="checkbox"/>
Parks/OS	<input type="checkbox"/>	I/S	<input type="checkbox"/>	Water	<input type="checkbox"/>

**Description:** Final planning & design and installation/construction of on-street & off-street parking meters.

**Location:**



