



City of San Leandro

Meeting Date: June 15, 2020

Staff Report

File Number: 20-243

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.I.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Jeanette Dong
Recreation and Human Services Director

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution to Approve a Consulting Services Agreement with Nelson Nygaard Consulting Associates for the Period of July 1, 2020 through June 30, 2021

SUMMARY AND RECOMMENDATIONS

The attached document is a Consulting Services Agreement, effective July 1, 2020 - June 30, 2021 between the City of San Leandro (COSL) and Nelson Nygaard Consulting Associates (NN) to provide services related to the implementation of the FLEX Paratransit Services Expansion Plan.

Staff recommends approval of a Resolution authorizing the City Manager to execute the Consulting Services Agreement with Nelson Nygaard Consulting Associates to implement the FLEX Paratransit Services Expansion Plan.

BACKGROUND

The City has provided City-based paratransit services for senior and disabled citizens, known as FLEX Paratransit, for several years. The designated paratransit funding is provided by the Alameda County Transportation Commission's (ACTC) allocation of sales tax revenue collected under County Measures B and BB. The primary service is a fixed route shuttle that operates Monday - Friday, 9:00am - 5:00pm. In early 2019, the City piloted a RIDES On-Demand program in conjunction with the City of Hayward serving as the lead agency, replacing the previous taxi voucher program that was suspended in October 2019.

Historically, an annual membership fee of \$20 was assessed for each fiscal year. This fee was initiated in 2008 because of a budget shortfall. Currently, the paratransit program can afford to eliminate the membership fee, beginning July 1, 2020.

Membership eligibility is dependent upon City residency status in addition to meeting the following criteria:

FLEX Shuttle - Registered FLEX Paratransit Program Member must be **60 years old or older** or at least 18 years old, plus East Bay Paratransit Certified. The age qualification for this program will be reduced to **50 years old or older** or at least 18 years old, plus East Bay Paratransit Certified beginning July 1, 2020.

FLEX RIDES On Demand - the member must be **70 years old* or older** or at least 18 years old, plus East Bay Paratransit Certified. The qualifications for this program will remain the same.

The City's Paratransit service membership experienced multiple years of decline as follows:

<u>Fiscal Year</u>	<u>18+/EBP</u>		<u>TOTAL</u>	<u>%Increase/Decrease*</u>
	<u>60+</u>	<u>Cert</u>		
2016 - 2017	303	5	308	N/A
2017 - 2018	267	4	271	13% decrease
2018 - 2019	215	5	220	19% decrease

The City previously contracted with NN to conduct a thorough review and analysis of the fixed route FLEX Shuttle program in order to explain the decline in ridership and to provide alternative service models in order to better serve the changing needs of San Leandro paratransit users. As part of the process, NN conducted various modes of outreach in multiple languages targeted toward both current users and those who were not familiar with the program. The Draft Expansion Plan were reviewed multiple times by City staff, the City of San Leandro Senior Commission, the City Council, and the community. The final report was completed in February 2020.

Analysis

City staff reviewed the proposals outlined in the FLEX Paratransit Services Expansion Plan and identified the recommendations that could be implemented in FY 2020-2021. NN was then asked to submit a proposal to provide oversight during Plan Implementation, which is expected to span a 12-month period. NN has expertise in the area of paratransit as well as familiarity with ACTC funding requirements. The choice of this vendor will ensure a smooth transition into the Implementation Plan as they possess the direct knowledge of both the City's existing Paratransit Program as well as the stakeholder input that they compiled to complete the FLEX Paratransit Expansion Plan. Proposed Project Manager Naomi Armenta, a San Leandro resident, is a key leader in transportation planning benefitting seniors and persons with disabilities. She served as the Paratransit Coordinator for ACTC for 10 years and worked on projects in several Bay Area Counties, as well as BART, the Metropolitan Transportation Commission, and the California State Transportation Agency.

Fiscal Impacts

The Implementation of the FLEX Paratransit Services Expansion plan will cost \$82,750. This amount will be funded by Measures B and BB in Account Number 150-36-001-5890 and 150-36-002-5890.

Attachment(s) to Related Legislative File

- Consulting Services Agreement FY-2020-2021

PREPARED BY: Susan Criswell, Senior Services Supervisor, Recreation and Human Services



City of San Leandro

Meeting Date: June 15, 2020

Resolution - Council

File Number: 20-244 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Jeanette Dong
Recreation and Human Services Director

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a Consulting Services Agreement with Nelson Nygaard Consulting Associates for the period of July 1, 2020 through June 30, 2021

WHEREAS, Nelson Nygaard Consulting Associates provided a Proposal to provide FLEX Paratransit Consulting Services; and

WHEREAS, the City Council supports the FLEX Paratransit Program and allows these services to be available for the disabled, persons 50 years or older, or East Bay Paratransit certified; and

WHEREAS, the City supports the mobility of the seniors and disabled; and

WHEREAS, the City receives funding for these services through the Alameda County voter-approved Measures B and BB; and

WHEREAS, the City Council is familiar with the terms of the agreement; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement contracts the term of the agreement for the duration of the 2020-21 Fiscal Year and is hereby approved; and
2. That the terms of the agreement will be memorialized in writing by the City Manager, subject to the approval of the City Attorney as to form; and
3. That the City Manager is authorized to execute said agreement with Nelson Nygaard Consulting Associates.; and

4. That an original executed agreement shall be provided to the City Clerk and be attached to and made a part of this resolution.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
NELSON NYGAARD CONSULTING ASSOCIATES
FOR
FLEX SHUTTLE PARATRANSIT CONSULTING SERVICES**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro (“City”) and Nelson Nygaard Consulting Associates (“Consultant”) (together sometimes referred to as the “Parties”) as of July 1, 2020 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2021, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant’s obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder’s attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.
- 1.6 **Public Works Contractor Registration.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work,

as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed **\$82,750**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the

hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.7 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as

of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

- 4.1.1 General Requirements.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets

the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than **\$3,000,000** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed **\$150,000** per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. RESERVED

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Submittal of Proof of Insurance Coverage. All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City's online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

4.6 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. **STATUS OF CONSULTANT.**

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and

all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this

Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code

Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Jeanette Dong ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.10 Notices.** Any written notice to Consultant shall be sent to:
Naomi Armenta, Senior Associate
Nelson Nygaard Consulting Associates, Inc.
2 Bryant Street, Suite 300
San Francisco, CA 94105
narmenta@nelsonnygaard.com

Any written notice to City shall be sent to:
Jeanette Dong, Director
City of San Leandro Recreation and Human Services Department
835 E. 14th Street
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

- 10.11 Professional Seal. RESERVED**

- 10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated

agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule
<u>Exhibit C</u>	Indemnification

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

NELSON NYGAARD CONSULTING
ASSOCIATES

Jeff Kay, City Manager

Printed Name: _____

Attest:

Title: _____

Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

Elizabeth Warmerdam, Interim Finance Director

150-36-001-5890 and 150-36-002-5890
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Jeanette Dong, Director
Recreation and Human Services

EXHIBIT A
SCOPE OF SERVICES

SCOPE OF WORK

PROJECT GOALS

- Implementation of new FLEX Route(s)
- Implementation of new FLEX On-Demand service
- Conduct six outreach meetings re: new services
- Conduct program monitoring
- Present program update to City Council, Facilities and Transportation Committee, and/or Mayor and City Manager's Office personnel as necessary

TASK 1 PROJECT MANAGEMENT

1.1 *Twice Monthly Check-in Meetings*

Nelson\Nygaard will meet with San Leandro staff twice monthly, currently proposed for the 2nd and 4th week of the month. The project team (consultants and staff) will retain the option to meet in-person up to once per month.

1.2 *Financial/contract administration*

Nelson\Nygaard will monitor the budget and contract/schedule for clear invoicing and administration.

Deliverables: 1.1 Agendas and documentation of action items from check-in meetings.
 1.2 Monthly invoice and budget updates.

TASK 2 IMPLEMENTATION OF NEW FLEX ROUTE(S)

2.1 *Development of route scheduling and Runcut, Blocking and Shift*

Nelson\Nygaard will develop route scheduling and complete tasks related to Runcut, Blocking and Shift. The team will discuss and determine appropriate deliverables during regular check-in meetings.

2.2 *Meetings with staff, public works (stops), and transportation provider*

Nelson\Nygaard will meet with San Leandro staff including Public Works re: stops, and the transportation provider up to six times (by phone or in-person) from beginning of contract through 60 days after start of service. Nelson\Nygaard will update the project team on action items as necessary.

- Deliverables:** 2.1 To be determined by project team.
2.2 Documentation of action items as necessary.

TASK 3 IMPLEMENTATION OF NEW FLEX ON-DEMAND

3.1 Identify options, plan to implement

Nelson\Nygaard will work with San Leandro staff to identify options and define parameters for on-demand service. The team will discuss and determine appropriate benchmarks and deliverables during regular check-in meetings.

3.2 Meetings with staff, phone provider, transportation provider - 6

Nelson\Nygaard will meet with San Leandro staff, and potential and selected concierge/telephone and/or transportation providers as appropriate up to six times (by phone or in-person) from beginning of contract through 30 days after start of service. Nelson\Nygaard will update the project team on action items as necessary.

- Deliverables:** 3.1 To be determined by project team.
3.2 Documentation of action items as necessary.

TASK 4 OUTREACH ON NEW PROGRAMS

4.1 Outreach meetings at dedicated events and non-dedicated events

The project team will identify and schedule up to six outreach meetings/events/presentations to educate riders on the new and improved programs and generate interest and excitement. These meetings could include City Council (or a subcommittee) and the Senior Commission. The project team will determine appropriate materials (e.g. PowerPoint, Boards, brochures, postcards, etc) and Nelson\Nygaard staff will prepare materials within the defined expense budget. Additional materials costs, translation, etc will need to be covered by the City. Nelson\Nygaard will provide up to two staff members to support the meetings.

- Deliverables:** 4.1 Materials and staff support for up to six outreach meetings/events/ presentations.

TASK 5 PROGRAM MONITORING

5.1 Implementation of Quality Control

Nelson\Nygaard will implement Quality Control and complete tasks related to Route Performance Validation, analysis and adjustment. This could require up to six meetings (by phone or in-person) from beginning of service through six to eight months after start of service. Nelson\Nygaard will update the project team on action items as necessary.

5.2 On-Demand program monitoring

Nelson\Nygaard will assist San Leandro staff with troubleshooting on-demand program monitoring from beginning of service through six to eight months after start of service. Nelson\Nygaard will update the project team on action items as necessary.

5.3 Program monitoring report and meetings

Nelson\Nygaard will assist San Leandro staff with formatting and preparing a program monitoring report for both FLEX Shuttle and FLEX On-Demand to be presented to the City Council (or a subcommittee) and the Senior Commission. The project team will determine appropriate materials (e.g. PowerPoint, Boards, etc) and Nelson\Nygaard staff will prepare materials and provide up to two staff members to present and/or support staff in presenting.

Deliverables:

- 5.1 Documentation of action items as necessary.
- 5.2 Documentation of action items as necessary.
- 5.3 Materials and staff support for presentation to City Council and the Senior Commission.

TASK 6 OPTIONAL PROJECT COMPLETION

6.1 Miscellaneous project implementation (client approved)

Nelson\Nygaard will reserve budget and hours up to the amount stated for Task 6 to meet any as yet undetermined project needs. Task 6 will only be implemented on client request and approval in writing (email is acceptable). The project team will determine any deliverables as necessary.

Deliverables: 6.1 To be determined by project team.

EXHIBIT B

BUDGET

		NelsonNygard Labor Costs																
		Richard Weiner	Naomi Armenta	Marvin	Emily Roach	Kevin Ottem	Terra Curtis	Samantha										
		Principal 4	Associate 1	Associate 2	Associate 2	Assistant Manager	Associate 2	Associate 2										
		Base Rate	54.19	33.13	33.13	45.60	55.02	51.58										
		Overhead 192.74%	104.45	63.85	63.85	87.89	106.05	99.42										
		Profit 10%	15.86	9.70	9.70	13.35	16.11	15.10										
		Total Billing Rate	\$288.72	\$174.60	\$106.68	\$106.68	\$146.84	\$177.17	\$166.09									
Task	Description									Hours	Cost	Total Labor Hours	Total Labor Costs	Total Travel Expenses	Total Misc. Expenses	Total Direct Expenses	Total Costs	
0	PROJECT MANAGEMENT and QA/QC									0	\$0	0	\$0				\$0	
1	Project Management																	
1.1	Twice Monthly Check-in Meetings (1 phone, 1 in-person)	4	60	60						124	\$18,026	124	\$18,026				\$18,026	
1.2	Financial/contract administration		12	6						18	\$2,734	18	\$2,734				\$2,734	
	Task Total	4	72	66	0	0	0	0	0	142	\$20,760	142	\$20,760	\$450	\$0	\$450	\$21,210	
2	Implementation of New FLEX Route(s)																	
2.1	Route Planning and Run cutting - Development of route scheduling and Runout, Blocking and Shift		4	28						12	\$5,678	44	\$5,678				\$5,678	
2.2	Meetings w/staff, public works (stops), transportation provider - 3 mo. phone; 3 mo. in-person, service start		22	60						8	\$11,569	90	\$11,569				\$11,569	
	Task Total	0	26	88	0	0	0	0	20	134	\$17,247	134	\$17,247	\$150	\$0	\$150	\$17,397	
3	Implementation of New FLEX On-Demand																	
3.1	Identify options, plan to implement	4	18	4	16		4			46	\$7,138	46	\$7,138				\$7,138	
3.2	Meetings w/staff, phone provider, transportation provider - 6	2	20	2	22		2			48	\$6,982	48	\$6,982				\$6,982	
	Task Total	6	38	6	38	0	6	0	0	94	\$14,120	94	\$14,120	\$0	\$0	\$0	\$14,120	
4	Outreach on New Programs																	
4.1	Outreach meetings at dedicated events and non; Senior Commission, Council - 6 meetings		16	18	18	8				60	\$7,807	60	\$7,807				\$7,807	
	Task Total	0	16	18	18	8	0	0	0	60	\$7,807	60	\$7,807	\$300	\$241	\$541	\$8,348	
5	Program Monitoring																	
5.1	Implementation Quality Control - Route Performance Validation, analysis and adjustment, 6 monthly meetings		10	80						12	\$12,273	102	\$12,273				\$12,273	
5.2	On-Demand program monitoring	2	2				2			6	\$1,281	6	\$1,281				\$1,281	
5.3	Program monitoring report and meetings - Sr Commission, Council		10	12	8					30	\$3,879	30	\$3,879				\$3,879	
	Task Total	2	22	92	8	0	2	0	0	138	\$17,432	138	\$17,432	\$150	\$0	\$150	\$17,582	
6	Optional Project Completion																	
6.1	Misc project implementation (client approved)		10	10	12					32	\$4,092	32	\$4,092				\$4,092	
	Task Total	0	10	10	12	0	0	0	0	32	\$4,092	32	\$4,092	\$0	\$0	\$0	\$4,092	
	TOTAL HOURS	12	184	280	76	8	8	32	600	600		600						
	TOTAL LABOR COST	\$2,465	\$32,108	\$29,871	\$8,108	\$1,175	\$1,417	\$8,313	\$81,459			\$81,459		\$1,050	\$241	\$1,291	\$82,750	
	SUBCONSULTANT MARKUP																\$0	
	TOTAL COSTS																\$82,750	

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.