PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 2\textsuperscript{nd} day of March, 2016 between City of Little Rock, Arkansas, (hereinafter referred to as CLIENT or CITY) and Nelson\Nygaard Consulting Associates, Inc. a California S Corporation, (hereinafter referred to as CONSULTANT), for the following reasons:

1. As a result of issues raised by citizens and members of the Little Rock Board of Directors (the “Board”) about the direction of the 30 Crossing Project (the “Project”) to be undertaken by the Arkansas Highway and Transportation Department (“AHTD”), in an effort to assist the Board, CITY staff issued a Request for Qualifications (“RFQ”) in order to secure the services of a planning consultant to undertake a comprehensive review of the Project and make recommendations as to actions the CITY should take in order to maximize the benefits of the Project and minimize any negative aspects of the Project.

2. The most qualified submission was made by CONSULTANT.

3. CONSULTANT has submitted a Scope of Work that forms the basis of this Agreement and includes items such as an assessment of development plans and draft design documents submitted by AHTD, interview of key stakeholders, a market analysis and the creation of a Downtown Vision that will include an assessment of and recommendations concerning west-east connectivity.

4. CONSULTANT agrees to provide the required services in exchange for an agreed upon amount of compensation.

5. On February 16, 2016, the CITY Board of Directors adopted Resolution No. 14,288 to authorize the City Manager to enter into a contract with CONSULTANT to provide consulting services as described above in the amount of Seventy-Five Thousand, Seven Hundred Seventy Dollars ($75,770.00), plus direct expenses.

In consideration of the promises contained in this Agreement, CLIENT and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE / TERM
The effective date of this Agreement shall be the date of the written Notice to Proceed. The term of this Agreement shall be from March 4, 2016 up to and including May 31, 2016.

ARTICLE 2 - GOVERNING LAW
This Agreement shall be governed by the laws of the State of Arkansas.

ARTICLE 3 - SERVICES TO BE PROVIDED BY CONSULTANT
CONSULTANT shall provide the Scope of Services described in Attachment A.

Any changes in the Scope of Services, which may become necessary due to changes in the Project, or otherwise reasonably required by CLIENT, shall be negotiated between the parties.

CONSULTANT agrees that a degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by members of the same profession, currently practicing, under similar circumstances.

ARTICLE 4 - COMPENSATION
For the proper performance of the Services listed in Attachment A, CLIENT shall pay CONSULTANT an amount not to exceed Eighty Four Thousand, One Hundred Seventy Dollars ($84,170.00) as set forth in Attachment B.
CONSULTANT shall submit monthly invoices to CLIENT. The invoices shall include charges for all labor and costs in accordance with the Scope of Services listed in Attachment A. The monthly invoice shall be accompanied by monthly progress reports that indicate the status of the Project.

CLIENT agrees to pay all approved invoices within thirty (30) days of receipt. CLIENT shall not be obligated to pay any invoices which are not in accord with the terms of this Agreement.

CONSULTANT reserves its rights to stop all work on this Project if, at anytime, an approved invoice remains unpaid for a period exceeding sixty (60) days.

ARTICLE 5 - INDEMNIFICATION

(a) Indemnification for Public Liability and Property Damage

CONSULTANT shall hold harmless, defend and indemnify, for damages arising out of bodily injury, death and property damage, the CLIENT, and the CLIENT’S officers and employees against all claims, demands, actions and suits (including reasonable post tender attorney’s fees and costs) brought against any of them arising from the CONSULTANT’S Services or any of its Subconsultant’s services under this Agreement other than professional services.

(b) Indemnification for Professional Liability

For liability arising out of professional services, the CONSULTANT shall indemnify, but shall have no duty to defend, CLIENT and the CLIENT’s officers and employees against liability for damages for which CONSULTANT may be liable to the extent such damages are actually caused by the negligent acts, errors or omissions of CONSULTANT, or any of CONSULTANT’S employees or subconsultant’s negligent acts or omissions under this Agreement. Provided, however, that in the event CLIENT is a party to litigation as a consequence of the Services performed by CONSULTANT under this Agreement, CONSULTANT agrees to assist and cooperate with CLIENT in such litigation with compensation to be mutually agreed upon by the parties in writing.

ARTICLE 6 - INSURANCE

In accordance with the terms of this Agreement, CONSULTANT shall maintain the following insurance:

(a) Commercial General Liability Insurance, with a limit of not less than $1,000,000 per occurrence and $1,000,000 general aggregate, and naming CLIENT as an Additional Insured.

(b) Automobile Insurance, with a combined single limit of not less than $1,000,000 each accident and shall name CLIENT as an Additional Insured.

(c) Workers’ Compensation Insurance in accordance with statutory requirements and Employers’ Liability Insurance with limits of not less than $1,000,000 for each occurrence.

(d) Professional Liability Insurance with limits of not less than $1,000,000 per claim and aggregate.

Prior to performing Services under this Agreement, CONSULTANT shall furnish CLIENT with certificates of insurance which evidence the requirements of this Article. Certificates will provide CLIENT with at least thirty (30) days’ advance written notice prior to cancellation of the above policies and at least ten (10) days’ written notice in the event of cancellation for non-payment of premium.
ARTICLE 7 - INDEPENDENT CONTRACTOR
CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

ARTICLE 8 - COMPLIANCE WITH LAWS
In performance of the Services, CONSULTANT shall comply with applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, permits, codes, criteria, and standards. CONSULTANT shall procure the permits, certificates, and licenses necessary to perform the Services.

ARTICLE 9 - TERMINATION AND SUSPENSION
This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have five (5) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

In the event of such termination, CONSULTANT will be paid for acceptable Services performed in accordance with this Agreement up to the date of termination.

CLIENT may terminate or suspend performance of this Agreement for CLIENT'S convenience upon written notice to CONSULTANT. Upon receipt of notice, CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to CLIENT and may submit a statement for the Services performed in accordance with this Agreement.

Non-Appropriation of Funds. This Agreement shall terminate without penalty at such time as appropriated funds are not available to satisfy the obligations of the CLIENT hereunder. The failure of the CLIENT to make an appropriation in any given year shall not be deemed a breach of this Agreement, nor give rise to any cause of action by CONSULTANT for legal or equitable relief. The CLIENT shall, to the extent possible, give CONSULTANT written notice ninety (90) days prior to such termination.

ARTICLE 10 - OWNERSHIP OF DOCUMENTS
Title to all documents, drawings and specifications with respect to work performed under this Agreement shall vest with the CLIENT when the CLIENT has compensated CONSULTANT in full, as provided herein, for the Services described in this document.

ARTICLE 11 - NOTICES
Any notices required by this Agreement shall be made in writing to the address specified below

CLIENT:
City of Little Rock, Arkansas
723 W. Markham Street
Little Rock, AR 72201
Attn: Tony Bozynski

CONSULTANT:
Nelson\Nygaard Consulting Associates
116 New Montgomery Street, Suite 500
San Francisco, CA 94105
Attn: Paul Jewel

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CLIENT and CONSULTANT.
ARTICLE 12 - PATENTS, COPYRIGHTS AND TRADE SECRETS
CONSULTANT and its employees shall not infringe on any United States patent, copyright, trade secret, or other proprietary right for any material, product, or part thereof used or furnished under this Agreement. CONSULTANT shall indemnify and hold CLIENT harmless from loss on account thereof, except when such loss is due to a particular design, process, material, or product required by CLIENT; provided, however, that CONSULTANT promptly notify CLIENT if CONSULTANT has reason to believe that such requirement is an infringement of any rights stated herein.

ARTICLE 13 - DELAY IN PERFORMANCE
Neither CLIENT nor CONSULTANT shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. Should such circumstances occur, the nonperforming party, within a reasonable time of being prevented from performing, shall give written notice to the other party, describing the circumstances preventing continued performance and the efforts being made to resume performance. CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances, but only to the extent agreed upon by CLIENT and CONSULTANT. Except for such time extension, CONSULTANT will not be entitled to claim any damages for delays in performance of its Services.

ARTICLE 14 - DISPUTES
In the event of a dispute between CLIENT and CONSULTANT arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or non-binding mediation. Should such negotiation or non-binding mediation fail to resolve the dispute, either party may pursue resolution in a court having competent jurisdiction. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 15 - EQUAL EMPLOYMENT OPPORTUNITY / NONDISCRIMINATION
CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is CONSULTANT's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

CONSULTANT agrees to comply with all applicable federal and state laws and regulations regarding nondiscrimination, and specifically agrees not to discriminate against any individual on the basis of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, or genetic information, and to require such compliance in contractual agreements with subcontractors and sub-subcontractors.

ARTICLE 16 - WAIVER
A waiver by either CLIENT or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.
ARTICLE 17 - SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. CLIENT and CONSULTANT further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 18 – SUBCONTRACTING AND STAFFING
CONSULTANT shall not engage independent consultants, associates, or subcontractors to assist in the performance of CONSULTANT’s Services other than the Subconsultants shown in this Agreement without the prior written consent of CLIENT.

ARTICLE 19 - SUCCESSORS AND ASSIGNS
CLIENT and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives, and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party, in respect to all provisions of this Agreement.

ARTICLE 20 - ASSIGNMENTS
Neither CLIENT nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party.

ARTICLE 21 – MISCELLANEOUS

Safeguarding of City Property. The CONSULTANT shall take all reasonable precautions to safeguard all CITY property entrusted to the CONSULTANT’S custody or control.

Copies Same as Original. This Agreement shall be executed in the original, and any number of executed copies. Any copy of this Agreement so executed shall be deemed an original and shall be deemed authentic for any other use.

Captions. All captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement.

Entire Agreement. This Agreement and the documents referenced and incorporated herein contain the complete and entire agreement of the parties respecting the transactions contemplated herein, and supersede all prior negotiations, agreements, representations and understandings, if any, among the parties regarding such matters.

Authority to Execute Agreement. The undersigned officials of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other documentation extending said authority have been duly passed and are now in full force and effect.

The parties further acknowledge and agree that they have had an opportunity to participate fully and equally in the drafting and construction of this Agreement and that the
rule that contracts are construed against the 
drafter does not apply in the construction of 
this Agreement.

IN WITNESS WHEREOF, Consultant and Client have executed this Agreement.

City of Little Rock, Arkansas
(CLIENT)

By: Bruce T. Moore
Title: City Manager
Date: June 1, 2014

Nelson\Nygaard Consulting Associates, Inc.
(CONSULTANT)

By: Richard Werner
Title: Principal
Date: March 21, 2016
Attachment A - Scope of Services

Nelson\Nygaard will work with the City of Little Rock to articulate a core set of community-driven goals for Downtown and reset the policy basis for the City’s engagement with AHDT on the I-30 Design process. The steps in that process will be as follows:

1. The Nelson\Nygaard Team will assess all current public and available private development plans as well as all draft design documents from AHDT. It will be the responsibility of the City of Little Rock to provide any available documents to the team.

2. The Nelson\Nygaard Team will undertake 15 to 20 key interviews of stakeholders (some of which may be focus groups) including owners, developers, cultural representatives, public officials, etc. to develop and understand a coherent view of the role of downtown and those factors that should be considered for sustaining sought outcomes long term such as neighborhood connectivity, diversity, housing opportunities, public space needs, etc.

3. The Nelson\Nygaard Team will undertake a high level market analysis for potential enhanced downtown development opportunities for framing and scoping of the remaining work effort.

4. The Nelson\Nygaard Team will craft a policy white paper framing the results of task 1, 2, and 3 in order to create an interim “Downtown Vision.” This vision will specifically include an assessment of east/west connectivity and will make a recommendations regarding the critical need for this connectivity. After review by staff and stakeholders, the Nelson\Nygaard Team will make one revision of the document based on a consolidated set of comments to create a final white paper.

5. The Nelson\Nygaard Team will undertake a work session with City management, key staff, Mayor, and City Board to develop a policy position on the I-30 project development process going forward through the lens of the Interim Downtown Vision.

6. The Nelson\Nygaard Team will facilitate a work session between AHDT, Metroplan, and City of Little Rock to frame City’s expectation of the I-30 process going forward.

Schedule

Nelson\Nygaard will accomplish this work in a period of 90 days from the receipt of a notice to proceed.
## Attachment B - Compensation

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Direct Travel Costs (Each Trip = $1,000)  
- $3,600  
- $3,400  
- $1,200

Total Direct Costs = $8,400