DATE: OCTOBER 1, 2013

TO: CITY MANAGER/CITY COUNCIL

FROM: URSULA LUNA-REYNOSA, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: AWARD CONTRACT TO NELSON\NYGAARD CONSULTING ASSOCIATES AND RECEIVE AN UPDATE ON PARKING MANAGEMENT IN TOWN CENTER

RECOMMENDED ACTION:

That the City Council (1) authorize the City Manager to enter into an agreement with Nelson \ Nygaard Consulting Associates in accordance with the attached scope of work; and (2) authorize a budget adjustment as provided for in the Fiscal Impact section below.

ISSUE:

The City of Dana Point (City) seeks to develop a Town Center Parking Report with the following objectives:

- make more efficient use of the existing parking supply, which currently has both spot shortages in some popular blocks and underutilized parking lots elsewhere
- promote public parking that is shared by retail, office and commercial uses
- enable revitalization and desired types of development in the Town Center
- accommodate coastal access
- ensure that adequate parking is provided for future development
- protect adjacent neighborhoods
- and provide for greener, more sustainable, parking solutions

BACKGROUND:

The City has a rich tradition of being both a peaceful coastal residential community and a beautiful destination for visitors. Each of these facets have historically been integral to the identity of the City, and balancing the needs of residents, visitors, local businesses,
and the natural coastal environment of Dana Point is of utmost importance. Throughout the year—and especially in summer—many visitors flock to the Town Center, beaches, harbor and other Dana Point attractions. The presence of so many visitors, combined with the needs of residents, business owners and their employees, creates substantial parking demand.

As a result, parking has long been discussed in Dana Point, and has been the subject of previous studies. While some recommendations from previous studies have been implemented, the City desires to proactively develop a plan in order to best manage and accommodate parking under existing conditions and for future, anticipated development while, at the same time, protecting surrounding neighborhoods.

**DISCUSSION:**

The City retained Fehr and Peers to conduct a parking analysis for Town Center. Their report was published in 2008. There was extensive data collection as part of that effort and because of the Great Recession there has not been significant private development within the Town Center since the report was published. The report concludes that a little over 50% of the total parking supply in Town Center (both public and private parking spaces) are being occupied during peak times of day. This initial data will be utilized as the baseline for the proactive parking management plan mentioned above.

City Staff desires to retain the services of Nelson Nygaard to prepare the plan. Nelson Nygaard specializes in developing parking plans and management programs that go beyond single-issue parking studies and instead focus on creating livable environments through efficient, fiscally responsible use of parking resources. They are highly experienced in drafting policies, regulatory language and practical implementation plans that set forth successful parking management strategies while understanding the specific needs of a city’s administration, advocacy groups, businesses and residential neighborhoods. Nelson Nygaard is skilled in helping clients understand the real costs of parking and developing strategies for balancing parking demand with financially feasible levels of supply. Nelson Nygaard has successful experience working with other cities located within the California Coastal Commission’s jurisdiction on parking related issues.

The scope of work (attached as Exhibit A to the Contract – Action Document A) for this project includes the following tasks:

- **Task 1:** Existing Conditions Analysis
- **Task 2:** Site Visits & Public Outreach
- **Task 3:** Draft Report
- **Task 4:** Planning Commission Study Session
• Task 5: Final Report

As part of this effort, Nelson \ Nygaard will help the City consider whether a “park once” approach is appropriate for the Town Center, and potential strategies for implementing that approach, such as purchasing or leasing existing private lots from willing owners and adding them to the available public parking supply. (A “Park Once” approach to parking means operating as much as is feasible of a district’s parking supply as shared, available-to-the-public parking, allowing motorists to park once and visit several destinations on a single visit. This approach often allows for parking to be efficiently shared between multiple uses, while providing convenience for drivers.)

They will also focus particular attention on management of the public parking supply, since the public parking supply is largely within the control of the City (although subject, of course, to Coastal Commission requirements) and is therefore usually the part of the parking supply that is most readily amenable to change. Solving parking problems on existing public streets is a key first step for any parking plan: once any existing issues and/or concerns about potential future problems on Town Center streets and/or nearby residential streets have been addressed with a robust parking management system, it then becomes far more feasible to successfully implement parking standards for private development which are appropriate to a compact, mixed-use town center.

If authorized by the Council, the City will execute a contract with Nelson \ Nygaard Consulting Services to commence work immediately. Upon completion of the services outlined to be included in this initial scope of work, the City will be in a position to move forward with an Amendment to the Town Center Plan to incorporate the revised parking standards identified by this initial scope of work and incorporate the Parking Management Plan as part of the City’s regulatory framework for Town Center. Upon approval of a Town Center Plan Amendment (which serves as a Local Coastal Plan) by the City Council, the amendment will then need to be considered by the California Coastal Commission. It is envisioned that Nelson \ Nygaard will assist the City in this second phase of the project. A separate proposal will be solicited and an amended contract would be brought forward to the City Council for consideration prior to the commencement of any work under such an amendment.

**NOTIFICATION AND FOLLOW-UP:** Additional public notification, as appropriate and otherwise required for Stakeholder/Town Hall meetings and Study Session, will be provided as the project moves forward.

**FISCAL IMPACT:** The cost of the services totals $35,000. A budget adjustment of $35,000 in 41-223 is requested from unencumbered fund balance that was provided this fiscal year from department savings from Fiscal Year 12-13.

**STRATEGIC PLAN IMPLEMENTATION:** The proposed action is consistent with the Strategic Plan Initiative to evaluate land use issues to ensure that the goals of the General Plan reflect the community’s vision and mission and to foster a vibrant business
climate.

**ACTION DOCUMENTS:**

A. Contract with Nelson \Nygaard Consulting Associates...........................................5

**SUPPORTING DOCUMENTS:**

None.
THIS AGREEMENT is made and effective as of October 7, 2013, between the City of Dana Point, a municipal corporation ("City") and Nelson Nygaard Consulting Associates, a California Corporation ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

   This Agreement shall commence on October 7, 2013 and shall remain and continue in effect until tasks described herein are completed, but in no event later than April 30, 2014 unless extended in writing by the City Manager, sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the above, Section 9 of this Agreement shall survive the term of this Agreement.

2. **SERVICES**

   Contractor shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

   Contractor shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement. Contractor represents it holds the necessary skills and abilities to perform the work as set forth in this Agreement, and City relies upon the skills and abilities of Contractor. Contractor shall perform the work and services under this Agreement in accordance with such heightened standard of work and in accordance with the accepted standards of the professional disciplines involved in the tasks described herein.
4. **CITY MANAGEMENT**

City's Director of Community Development shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Contractor, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Contractor. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Contractor's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) Except as otherwise stated herein, the City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Final payment shall be coordinated and conditioned with completion of the tasks set forth in Exhibit A. This amount shall not exceed Thirty-Five Thousand Dollars ($35,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement ("Total Agreement Amount").

(b) Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten-thousand dollars ($10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Contractor will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall
include the contract amount, invoice amount to date, and balance remaining. Payment shall be made within thirty (30) days of receipt of each invoice as to all nondisputed fees. If the City disputes any of Contractor's fees it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Prior to signing the Agreement, Contractor shall provide to City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. All of City's monetary obligations set forth in this Agreement are conditioned upon City's receipt of an executed W-9 form from Contractor.

(e) Notwithstanding Contractor’s delivery of invoices to City and/or other remedies available to the City, City may retain ten percent (10%) of the payment on each month’s invoice, on a cumulative basis, until Contractor has completed all of the tasks set forth in Exhibit A.

(f) Notwithstanding Contractor’s delivery of invoices to City and/or other remedies available to the City, if Contractor has not delivered to the City the required certified insurance policies and endorsements within the time required by Section 10(f) (3) of this Agreement, City has the sole discretion to withhold any and all payments to Contractor until Contractor delivers to the City the certified insurance policies and endorsements required by Section 10 of this Agreement.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section 5.

(c) Except as otherwise provided herein and prior to the termination date of this
Agreement, this Agreement may be terminated by written consent of both the City and the Contractor.

7. **DEFAULT OF CONTRACTOR**

   (a) The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

   (b) If the City Manager or his/her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **OWNERSHIP OF DOCUMENTS**

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

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

9. INDEMNIFICATION

(a) Indemnification

To the fullest extent permitted by law, Contractor shall protect, indemnify, defend and hold harmless City and any and all of its officials, employees, volunteers and agents from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the actions or failure to act of Contractor, its officers, agents, employees or subcontractors, or any entity or individual that Contractor shall bear the legal liability thereof.

For purposes of this Agreement, a “Licensed Design Professional” shall be limited to licensed architects, licensed landscape architects, registered professional engineers, and licensed professional land surveyors, all as defined by current law, and as may be amended from time to time by California Civil Code § 2782.8.

(b) Indemnification Provisions Pertaining To Subcontractors And Others Performing Work. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.
10. **INSURANCE REQUIREMENTS**

Prior to the beginning of and throughout the duration of the Work, Contractor shall maintain insurance in conformance with the requirements set forth below. Contractor shall use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Contractor shall 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 the work hereunder by the Contractor, its agents, representatives, or employees. All Sections of this Agreement and any provision in City's Request for Proposal and Contractor's submitted proposal are subordinate to and superseded by the requirements contained in this Section to the extent that any provision or portion thereof conflicts with or impairs these requirements or any obligation to or right under or pursuant to these insurance requirements. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.

(a) **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. **Commercial General Liability Insurance** – Written on the Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another.

2. **Business Auto Coverage** – Written on the ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each person.

3. **Workers' Compensation/Employer's Liability Insurance** - Written on a policy form providing workers’ compensation statutory benefits as required by the State of California. Employer's Liability limits shall
be no less than one million dollars ($1,000,000) per accident or disease. Employer's Liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, its officers, officials, employees, or agents.

(4) Professional Liability or Errors and Omissions Insurance as appropriate to the Contractor's profession - Written on policy form coverage specifically designed to protect against acts, errors or omissions of the Contractor and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement.

(b) Minimum Limits of Insurance. Contractor shall maintain limits no less than:

(1) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

(3) Errors and Omissions Liability: The policy limit shall be no less than $1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement. Insurance shall continue to be effective to cover all claims made within three (3) years of the completion of the work in the Agreement.

(c) Deductibles and Self-Insured Retention. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-
insured retention, substitution of other coverage, or the Contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses or other solutions. Any deductibles in excess of ten percent (10%) or self-insured retention must be approved by the City Manager.

(d) Other Insurance Provisions. The general liability, business auto liability, and any necessary umbrella liability policies are to contain, or be endorsed to contain, the following provisions:

(1) General liability and umbrella policies shall cover the City, its officers, officials, employees, agents, and volunteers are to be covered as insureds or additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. Endorsements including the additional insured shall be identified on standard ISO endorsement number CG 20 10, attached to an ISO-CGL policy with an edition prior to 1992, or other form as expressly approved by City, and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project. In no event shall the Contractor use an additional insured endorsement with an edition date of 1992 or later, absent express written authorization by City. Contractor also agrees to require all contractors and subcontractors to do likewise.

(2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.

(4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and there shall be no cross
liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured. Contractor expressly waives any claim against City for any covered act or event, and Contractor's insurance policy shall not prevent such waiver. The limits of insurance required herein shall in no way limit the liability of the party providing the insurance. In addition, if the coverage or limits available to Contractor exceed that required by this Agreement, and the loss incurred by the additional insured exceeds the amount required by this Agreement, it is the parties' intent that all such additional coverage and limits available will apply irrespective of the specific coverage or limits required herein.

(5) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

(6) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

(7) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.

(8) For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

(9) Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

(10) None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any
kind that has not been first submitted to City and approved of in writing.

(11) No liability policy shall contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

(12) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City’s protection without City’s prior written consent.

(13) The provisions of any workers’ compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

(14) Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

(15) Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

(e) Acceptability of Insurers. Insurance is to be placed with insurers authorized and admitted to do business in California and with a current A.M. Best’s rating of A or better and a financial size of VII or greater, unless otherwise acceptable to the City.

(f) Verification of Coverage and Notice of Cancellation.
(1) Contractor shall immediately furnish to City certificates of insurance or endorsements, satisfactory to City, evidencing the insurance coverage above required prior to the commencement of performance of services hereunder. These certificates or endorsements shall provide that such insurance is the minimum, is in no way limited by any provision herein, and allows for the application of all coverage available to the additional insureds. Further, the certificates or endorsements shall require thirty (30) days written notice to additional insured City prior to any termination, suspension, cancellation, or non-renewal, or the reduction of available coverage, or any change in the terms of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

(2) Contractor agrees that if Contractor commences work under this Agreement without first providing City copies of the required insurance certificates or endorsements, that Contractor does so at its own and sole risk. In the event Contractor's insurance is not acceptable to City or copies of insurance certificates or endorsements are not provided, City shall have no obligations to compensate Contractor for such work unless Contractor possesses a notice to proceed from City for this work.

(3) Within sixty (60) days of the commencement of this Agreement, Contractor shall furnish certified copies of the actual policies and endorsements. Failure to submit such policies shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. If proof of any insurance required under this Agreement is not delivered as required or if such insurance is canceled at any time and no replacement coverage is provided, City shall have the right but not the duty to obtain any insurance it deems necessary to protect its interests under this Agreement, express or implied, in any way relating to City. Any premium for such coverage shall be charged to and promptly paid by Contractor or, at City's option, may be deducted from sums due to Contractor.

(4) In the event of the premature termination of this Agreement for any reason, Contractor agrees to maintain the required insurance coverage until City provides written authorization to terminate the coverage following a review and determination that all liability posed under this Agreement as to the party providing the insurance
has been eliminated.

(5) Except as outlined in Section 10(b) (3) above, Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

(6) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor’s insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

(g) Notice of Claim or Loss. Contractor agrees to provide immediate notice to City of any claim or loss likely to involve City or its employees or agents which exceeds $2,500 or is likely to exceed that amount arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

(h) Sub-Contractor Insurance Requirements. Contractor agrees to require that all parties, including but not limited to sub-Contractors and additional Contractors or professional services with whom Contractor enters into contracts or whom Contractor hires pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required here, at a minimum. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Contractor acknowledges and agrees that upon request, all agreements with sub-Contractors and others engaged in the project contemplated by this Agreement will be submitted to City for review. Contractor agrees and acknowledges that such contracts may require modification as to the insurance requirements necessary to properly protect City.
11. **INDEPENDENT CONTRACTOR**

   (a) Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

   (b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

12. **LEGAL RESPONSIBILITIES**

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

13. **UNDUE INFLUENCE**

   Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Dana Point in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Dana Point will receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement.
entitling the City to any and all remedies at law or in equity.

14. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with this Agreement.

15. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City’s prior written authorization. Contractor, its officers, employees, agents, or sub-Contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor, its officers, employees, agents, or sub-Contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. However, City’s right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. **NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal
Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:  City of Dana Point
         33282 Golden Lantern
         Dana Point, California 92629
         Attention:  City Clerk

To Contractor:  Nelson\Nygaard Consulting Associates
               116 New Montgomery Street, Suite 500
               San Francisco, CA 94105
               Attention:  Patrick Siegman, Principal

17. ASSIGNMENT

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only shall perform the services described in this Agreement.

Neslon\Nygaard Consulting may use assistants, under its direct supervision, to perform some of the services under this Agreement. Contractor shall provide City fourteen (14) days' notice prior to the departure of Patrick Siegman from Contractor's employ. Should he/she leave Contractor's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

18. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW
The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Dana Point.

20. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. **SEVERABILITY**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

22. **NO PRESUMPTION REGARDING DRAFTER OF THIS AGREEMENT**

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

23. **ATTORNEY’S FEES**

If any action at law or suit in equity, including an action for declaratory relief, is brought by either party with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees, in addition to any other relief to which it may be entitled, and such amount may be added to, and made a part of, such judgment.
24. **AUTHORITY TO EXECUTE THIS AGREEMENT**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

............................................................................................................................

CITY OF DANA POINT

By: ___________________________

Doug Chotkevys, City Manager

Attest:

Kathy Ward, City Clerk

CONTRACTOR

By: ___________________________

Patrick Siegman

Its: Principal

Approved As to Form:

By: ___________________________

(Please sign)

Patrick Munoz, City Attorney

Its: ___________________________

(Typed name)

(Title)
EXHIBIT A

CONTRACTOR'S PROPOSAL

September 19, 2013

Ms. Ursula Luna-Reynosa
Community Development Director
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

RE: Proposal to Prepare a Town Center Parking Plan

Dear Ms. Luna-Reynosa,

On behalf of my colleagues at Nelson\Nygaard Consulting Associates, I am pleased to submit this proposal to prepare a Parking Plan for Dana Point’s Town Center and the nearby residential streets. We look forward to the opportunity to work with you and your community on this interesting and important project.

Should you have any questions regarding our submittal, please contact me at 415-281-6946 or psiegman@nelsonnygaard.com. This proposal will remain valid for 90 days from the date of submission. We look forward to hearing from you.

Sincerely,

Patrick Siegman, Principal
PROJECT UNDERSTANDING

The City of Dana Point has a rich tradition of being both a peaceful coastal residential community and a beautiful destination for visitors. Each of these facets have historically been integral to the identity of the City, and balancing the needs of residents, visitors, local businesses, and the natural coastal environment of Dana Point is of utmost importance. Throughout the year—and especially in summer—many visitors flock to the Town Center, beaches, harbor and other Dana Point attractions. The presence of so many visitors, combined with the needs of residents, business owners and their employees, creates substantial parking demand.

As a result, parking has long been discussed in Dana Point, and the subject of previous studies. While some recommendations from previous studies have been implemented, the City desires to proactively develop a plan in order to best manage and accommodate parking under existing conditions and for future, anticipated development while, at the same time, protecting surrounding neighborhoods.

As overall objectives for this study, we understand that the City wishes to:

- make more efficient use of the existing parking supply, which currently has both spot shortages in some popular blocks and underutilized parking lots elsewhere
- promote public parking that is shared by retail, office and commercial uses
- enable revitalization and desired types of development in the Town Center
- accommodate coastal access
- ensure that adequate parking is provided for future development
- protect adjacent neighborhoods
- and provide for greener, more sustainable, parking solutions

The plan will also need to take into account the priorities and requirements of the California Coastal Commission, since the Town Center lies within the Coastal Zone.

We understand that since previous Town Center studies included considerable data collection on existing parking conditions and projected requirements, the primary focus of this new plan should be on (a) developing improved strategies for managing existing parking, and (b)
Town Center Parking Plan Proposal
City of Dana Point

recommending revised parking standards and regulations for land uses within the Town Center. As former hands-on parking managers, with substantial experience helping California cities design and implement innovative parking strategies, our team welcomes this challenge.

WORK PLAN

PROJECT APPROACH

Given the desire to achieve strong support for readily achievable actions, we have focused this scope of work on (a) improving the management of the existing parking supply, including both on-street and off-street parking facilities, and (b) recommending revised parking standards for private development. This approach has several advantages. Many common parking issues, such as spot parking shortages on some popular downtown blocks, underutilized parking facilities on other blocks, and concern about potential spillover parking issues on nearby residential streets, may be occurring in the study area. New management approaches — provided there is public support for them — can solve these issues, and encourage better use of lots that are currently underused.

As part of this effort, we will help the City consider whether a “park once” approach is appropriate for the Town Center, and potential strategies for implementing that approach, such as purchasing or leasing existing private lots from willing sellers and adding them to the available public parking supply. (A “Park Once” approach to parking means operating as much as is feasible of a district’s parking supply as shared, available-to-the-public parking, allowing motorists to park once and visit several destinations on a single visit. This approach often allows for parking to be efficiently shared between multiple uses, while providing convenience for drivers.)

We will also focus particular attention on management of the public parking supply, since the public parking supply is largely within the control of the City (although subject, of course, to Coastal Commission requirements) and is therefore usually the part of the parking supply that is most readily amenable to change. Solving parking problems on existing public streets is a key first step for any parking plan: once any existing issues and/or concerns about potential future problems on Town Center streets and/or nearby residential streets have been addressed with a robust parking management system, it then becomes far more feasible to successfully implement parking standards for private development which are appropriate to a compact, mixed-use town center.

Project area boundaries

This initial scope of work assumes that the project area for this planning effort will consist of the Town Center (as it is defined in the Town Center Plan), plus the on-street parking within approximately a five-minute walk of the Town Center. As part of our initial task, we will work with City staff to finalize these project area boundaries.

Deliverables

All deliverables will be submitted electronically in Microsoft Office or Adobe Acrobat PDF formats.
Town Center Parking Plan Proposal
City of Dana Point

TASK 1: EXISTING CONDITIONS ANALYSIS

Nelson\Nygaard will review existing, readily available documents and data documenting parking conditions within the study area. This task will include reviewing previous parking studies, such as the studies and reports prepared as part of the Town Center planning process, municipal code sections related to parking, and other relevant data and documents provided by the City. (Our scope of work for this project assumes no new data collection will be conducted, since previous studies have provided a solid base of data on existing parking conditions.) We propose to complete the bulk of this review even before the project kick-off call and initial site visit, in order to begin the project with a solid base of knowledge about the project area fresh in our minds.

The project team will then meet with City staff by telephone to kick off the project. During this call, we will aim to finalize the scope of work and schedule, confirm overall project goals, and clarify communication protocols and project roles. We will also seek to confirm the proposed community outreach strategy, and to identify all key stakeholders, community groups and public agencies whose input will be needed to ensure a successful outcome for the project.

Together, this document review and conference call will provide a solid baseline for understanding how parking in the study area currently functions.

Deliverable 1.1 Project Kickoff Call

TASK 2: SITE VISITS & PUBLIC OUTREACH

To help develop and build support for a realistic plan, Nelson\Nygaard will develop and carry out a collaborative planning process, designed to incorporate the perspectives, input and interests of a broad cross-section of community stakeholders.

A "Toolkit" of Parking Strategies

As a first step, we will prepare a "toolkit" of technically feasible options for managing parking (both on-street and off-street). The toolkit will consist primarily of parking management policies which have a track record of being successfully implemented in coastal California communities. We will also include in this toolkit an introduction to the wide range of available parking technologies, focusing on those which may be especially useful for addressing Dana Point’s particular challenges. To the extent necessary to illustrate the range of available options, and the pros and cons of applying them in Dana Point, we will also draw upon our library of examples from other communities around California, nationwide, and internationally. The toolkit of options will include an array of options for managing curb parking such as:

- time limits
- parking pricing, both conventional and variable (e.g., San Francisco’s SFpark program)
- commercial parking benefit districts (e.g., in San Diego, Ventura, and elsewhere)
- residential parking benefit districts (e.g., in Santa Cruz, CA, and Boulder, CO)
- conventional residential parking permits
- “parklets” and other flexible parking arrangements (e.g., in San Francisco and Mountain View)

We will also provide an array of technically feasible options, including both policies and technologies, for managing and regulating the Town Center’s off-street parking. This will include:
Town Center Parking Plan Proposal
City of Dana Point

- The option of developing a “Park Once” district for the Town Center, which has the potential to allow parking to be more efficiently shared between multiple users. As part of this, we will study the potential for purchasing or leasing existing private lots and adding them to the Town Center’s available public parking supply.

- Options for new parking standards for private development within the Town Center.

We will then prepare one or more PowerPoint presentations (customizing these presentations as appropriate for each stakeholder meeting) summarizing this toolkit of parking technology and policy options.

Site Tour and Public Outreach

Over the course of a three-day visit, we will engage in a site tour and interviews with City staff, and will also engage with the community in a round of public outreach. We will begin by conducting site visits with City staff to observe existing parking and circulation conditions, and will interview City staff from appropriate departments (e.g. staff responsible for parking enforcement).

During the remainder of the trip, we will meet with as many community groups, City commissions and advisory groups, public agencies, and other key stakeholders as is feasible. We anticipate that this will include most or all of the following groups, and will work with City staff to finalize this list:

- Residents and residents’ associations
- Business owners and business associations
- Property owners and/or developers
- Planning Commission
- Coastal Commission staff and other appropriate public agencies

If appropriate, we will also conduct a Council study session during this initial round of community engagement.

Start by listening: During these meetings, we propose to start by listening. We will seek to ascertain:

- What do the meeting participants/interviewees see as the most important issues, problems and opportunities?
- Did the meeting participant/interviewees participate in or hear about previous parking planning efforts? What did they think of them?

Concise presentation: We will then make a succinct presentation. Topics covered will include:

- Summarize existing parking conditions (to the extent known)
- A "toolkit" of available parking policy options and technologies (as described above)
- A brief overview of the process required to change existing parking policies (including Coastal Commission requirements)

Ask for feedback: We will ask the meeting participant/interviewees to provide us with feedback on the parking policy options presented, as well as any other concerns or issues they wish to raise.

We will then meet with City staff (either in-person or via conference call) to debrief on the results of this public outreach and review next steps.
Town Center Parking Plan Proposal
City of Dana Point

Deliverable 2.1 Parking Toolkit (PowerPoint presentation)
Deliverable 2.2 Public Outreach (Three Days)

**TASK 3: DRAFT REPORT**

Nelson\Nygaard will prepare a set of recommendations for effectively managing and regulating parking in the Town Center and on the adjacent residential streets, in the form of a technical report with text and graphics. The report will describe a clear set of principles and policies for regulating and managing the existing parking supply, including both on-street and off-street parking. These recommendations will address the goals and issues already identified by previous studies, including:

- making more efficient use of the existing parking supply, which currently has both spot shortages in some popular blocks and underutilized parking lots elsewhere
- promoting public parking that is shared by retail, office and commercial uses
- enabling revitalization and desired types of new development in the Town Center
- accommodating coastal access
- ensuring that adequate parking is provided for future development
- protecting adjacent neighborhoods from spillover parking
- and providing for greener, more sustainable, parking solutions

The report’s recommendations will also take into account the priorities and requirements of the California Coastal Commission, in order to ensure that the solutions proposed are actually implementable. The report will include a clear prioritization of next steps and proposed implementation actions. We will submit an initial draft for review by City staff. Based on a single set of non-conflicting comments, we will then revise the initial draft and submit a revised Draft Parking Report.

Deliverable 3.1 Initial Draft & Draft Parking Reports

**TASK 4: PLANNING COMMISSION STUDY SESSION**

Nelson\Nygaard will prepare for and attend a meeting of the Planning Commission. At this meeting, Nelson\Nygaard will present the recommendations of the Draft Parking Report, and engage the Commission in a study session to consider these draft recommendations.

Deliverable 4.1 Summary of Report Recommendations (PowerPoint presentation)
Deliverable 4.2 Attend Planning Commission Study Session

**TASK 5: FINAL REPORT**

Based on the feedback received from the Commissioners and public at large at the Planning Commission Study Session, Nelson\Nygaard will work collaboratively with City staff to refine all of the recommendations in the Draft Parking Report. We will revise the Draft Parking Report in response to a single set of non-conflicting comments, in order to produce the Final Parking Report.

Deliverable 5.1 Draft Final & Final Parking Reports
# BUDGET

Our budget for this project is provided in the table below.

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