

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
TRANSPORTATION CENTER, FTA GRANTEE STATUS, AND VEHICLE FOR HIRE**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to and The Goodman Corporation ("Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the City Manager and/or his designee.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 1, 2015 and terminate on November 1, 2016.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

**III. SCOPE OF SERVICES**

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in *Exhibit 1* which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager or his designee. The determination made by City Manager and/or his designee shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager and/or his designee. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to City Manager

and/or his designee; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager and/or his designee, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed one hundred sixty-seven thousand dollars (\$167,000) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Pflugerville City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by CONSULTANT shall be at the City's sole risk and without liability to the CONSULTANT.

#### **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the

services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 15 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no

additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of Pflugerville  
Attn: Brandon Wade  
City Manager  
P.O. Box 589  
Pflugerville, Texas 78660

If intended for Consultant, to:

The Goodman Corporation  
Attn: Barry Goodman  
President  
3200 Travis St, Suite 200  
Houston, TX 77006-3636

## **IX. INSURANCE**

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "*Transportation Center, FTA Grantee Status, and Vehicle for Hire*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

### **Insurance Requirements**

Bidder/Proposer performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Bidder/Proposer shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate Or	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors Personal Injury Contractual Liability		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	Waived	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. We will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville  
Capital Improvement Program  
P.O. Box 589  
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement under terms satisfactory to the City, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

## **X. INDEMNIFICATION**

10.1 **CONSULTANT** covenants and agrees to **INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of

negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for by H.B. 2049 passed by the Texas 84<sup>th</sup> Legislature until effective and upon its effective date, pursuant to Texas Local Government Code § 271.904 (d)(1-2)

10.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.



## **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

## **XII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City

and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIII. CONFLICT OF INTEREST**

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

### **XIV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

### **XV. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XVI. LICENSES/CERTIFICATIONS**

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XVII. COMPLIANCE**

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XVIII. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XIX. LAW APPLICABLE**

**19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.**

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Pflugerville, Travis County, Texas.

## **XX. LEGAL AUTHORITY**

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## **XXI. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXII. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXIII. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Attachment "A" Scope of Services including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

#### **XXIV. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

#### **XXV. MISCELLANEOUS CITY CODE PROVISIONS**

**25.1 Representations and Warranties by Consultant.** If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

**25.2 Franchise Tax Certification.** A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

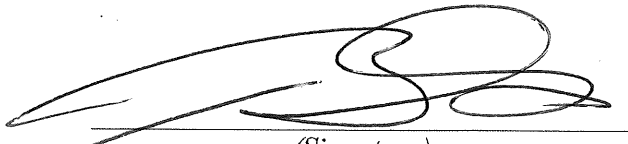
**25.3 Eligibility Certification.** Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

**25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State.** Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**25.5 Texas Family Code Child Support Certification.** Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**EXECUTED and AGREED** to as of the dates indicated below.

**CITY OF  
PFLUGERVILLE**

  
(Signature)

Printed Name: Brandon E. Wade

Title: City Manager

Date: 10/14/2015

**THE GOODMAN CORPORATION**

  
(Signature)

Printed Name: Barry Goodman

Title: President

Date: 10/2/15

## EXHIBIT 1

# Transportation Center, FTA Grantee Status, and Vehicle for Hire

### *Scope of Services*

#### **Background**

The City of Pflugerville has been considering implementation of park and ride service to better serve Pflugerville residents traveling to Austin's Capital Complex, Central Business District and the University of Texas (Central Austin). Pflugerville residents commuting to Central Austin have few public transportation options. Most Pflugerville commuters utilize IH 35 as their primary travel corridor to Central Austin. On most days, traffic on IH 35 between Pflugerville and Austin is bumper to bumper due to significant congestion. In fact, Austin ranked 10<sup>th</sup> worst in congestion according to the 2015 INRIX National Traffic Scorecard, which provides a comprehensive analysis of the state of congestion across the U.S. More specifically, TxDOT's 2014 100 Congested Roadway Segments report ranked the IH 35 travel corridor as the 2<sup>nd</sup> most congested in Texas. These findings were reinforced by the Texas Transportation Institute 2015 Urban Mobility Scorecard, which ranked Austin as one of the most congested large cities in the nation.

Increased travel times, auto costs and congestion are deteriorating the quality of life for many Pflugerville residents. In response to this growing immobility, the Capital Metropolitan Transportation Authority (CMTA) is initiating the development of a Transit Development Program (TDP). The TDP will review existing and future demand for transit connectivity locally and regionally to improve the quality of life for the residents of Pflugerville.

The Goodman Corporation (TGC) has developed the following two phased Scope of Services to assist the City of Pflugerville with oversight of the CMTA TDP preparation, identification and location for a proposed Transportation Center and potential City Hall, which will include joint use, shared parking, and regional and local transit interface and development of a Vehicle for Hire Ordinance. In addition, TGC will assist the City of Pflugerville to become an eligible Federal Transit Administration (FTA) grantee, by addressing the City's ability to meet all legal, technical, and financial requirements associated with the receipt and expenditure of federal transit funding. TGC will support the City to pursue federal and state funding for a Transportation Center and other transit related infrastructure. The Scope specifically includes: the development of information, data, Environmental Assessment documentation to support the Transportation Center; the development of analyses, maps and other relevant documentation suitable for use in the pursuit of federal and state transit funding; and preparation of documentation in support of a Letter of No Prejudice request to federally qualify the proposed Transportation Center and pedestrian-transit access improvements for federal funding.

Phase I will be conducted over a four (4) month period and accomplish the following objectives:

- Demand analysis for a proposed Transportation Center, which would accommodate regional commuter service initially and eventually small scale fixed route service to connect key activity centers and downtown with the Center. This work will be accomplished in advance of the Capital Metro TDP, so that the TGC data analysis can assist in driving the Capital Metro process;
- A draft Vehicle for Hire Ordinance for consideration by City Council that will enable the City to address and regulate vehicles for hire which enter Pflugerville to pick up or drop off passengers;
- Develop documentation to establish the City of Pflugerville as an eligible Federal Transit Administration (FTA) grantee for the direct receipt of FTA Section 5307 funding, sub-allocated by Capital Metro, and the direct receipt of discretionary federal funding.

Phase II will be accomplished over a nine (9) month period and accomplish the following objectives:

- Representation of the City within the CMTA TDP development process;
- Site selection analysis for the proposed Transportation Center based on the demand analysis completed in Phase I;
- Preliminary facility plan including estimation of facility and parking requirements, preliminary capital costing, and conceptual site plan;
- An existing conditions inventory of key pedestrian corridors within a ½ mile radius and bike corridors within a three mile radius of the proposed Transportation Center. The inventory will to determine the need for future accessibility improvements to transit hubs.
- Environmental assessment documentation, quantification of benefits, and capital development cost related to pedestrian – transit-access improvements for the surrounding area; and
- Development of documentation in support of a Letter of No Prejudice (LONP) request from the City to the FTA.

## **Phase I - Transportation Center Advanced Planning**

### **Task 1: Demand Analysis**

- TGC will analyze U.S. Census data to establish population growth, demographic, and mobility needs profiles for the City of Pflugerville. Income, age, and disability status data will be organized into a Transit Needs Index and mapped to identify the location(s) of higher transit need within the study area.

- TGC will analyze CAMPO Travel Demand Model Traffic Analysis Zones (TAZ) data for Home-Base Work trips which originate or end within the study area. TGC will also analyze work-related trips using the U.S. Census Longitudinal Employer-Household Dynamics (LEHD) data.
- TGC will apply the Texas Transportation Institute (TTI) park and ride ridership estimation methodology to measure demand for potential Transportation Center locations.
- TGC will estimate park-and-ride and shared use parking demand for the proposed Transportation Center

**Deliverable:** Documentation of demand analysis within the Advanced Planning Report.

**Cost:** \$20,000

## **Task 2: Vehicles for Hire Ordinance**

- Develop Requirements:
  - Operator/Driver background check, training, and drug and alcohol testing
  - Permits and Certificate of Public Means and Necessity (procedures, protests, etc.)
  - Insurance
  - Reporting
  - Re-Certification timeframe
- Develop Procedures:
  - Certification
  - Re-Certification
  - Passenger Complaint
- Develop Standards:
  - Vehicle Inspection and Safety
  - Operations
- Define Terms:
  - Vehicles for Hire (taxicabs, pedi-cabs, limousines, charters, jitneys, shuttles, private bus companies, and other means of conveyance)
  - Exclusions
- Develop Statement of Policy
- Develop the proposed ordinance in coordination with City staff and the City Attorney.



**Deliverable:** Memorandum 1, delineating basic proposed ordinance requirements, procedures and standards and terms; and, Technical Memorandum 2 which will be a recommended draft ordinance for City Council consideration.

**Cost:** \$13,000

### **Task 3: Establish City as FTA Grantee**

- TGC will work with City representatives to establish the City as a Direct Recipient (federal grantee) of formula and discretionary FTA funding, which enables the City to draw funds directly from the FTA. This process will require collaboration and coordination with CMTA, CAMPO and FTA.
- TGC will prepare all required Resolutions, legal documentation, financial support and other federally required assurances to support the City's request to become an eligible FTA grantee.

**Deliverable:** Preparation of all legal, technical, and financial documents to demonstrate capacity to become an eligible FTA grantee, and intergovernmental communication with relevant agencies.

**Cost:** \$18,000

## **Phase II - Transportation Center Advanced Planning**

### **Task 4: Transportation Center Building Program and Site Selection Analysis**

- **Site Selection Analysis.** TGC will complete a site selection analysis to identify a preferred location for the proposed Transportation Center. A minimum of three sites will be assessed. Factors will include adequate site, availability of land, accessibility, environmental condition, surrounding land use, and expansion potential for the City Hall among other factors established by TGC with City staff input. After finalizing the selection criteria, TGC will weight each factor, score each site, and recommend a preferred site.
- **Traffic Impact Assessment.** TGC will conduct a traffic impact analysis in accordance with City criteria to measure ingress and egress from the recommended site and determine existing roadway capacity to meet estimated traffic demand.
- **Building Program.** Based on the TDP, transit need and parking demand estimated in Task 1, TGC will develop a building and site program for the Transportation Center that may include transit center and non-transit parking, lobby, complementary uses developed under FTA joint development guidelines,. The building program will establish a minimum site requirement and include conceptual design and renderings of the proposed Transportation Center and any joint-use development, such as a City Hall complex.

- **Title VI.** TGC will complete a Title VI site equity analysis , which includes an Environmental Justice review of the preferred site location and its positive and/or negative impacts on the surrounding area.
- TGC will organize, facilitate and document two (2) public meetings as part of the site selection process.

**Deliverable:** Documentation within the Advanced Planning report of site selection analysis, building program including conceptual facility and site design and renderings, traffic impact assessment, and documentation of Title VI equity analysis.

**Cost:** \$38,000

#### **Task 5: Existing Conditions Inventory for Pedestrian/Transit Access**

- **Inventory and Costing.** FTA recognizes pedestrian/transit access enhancement improvements within a ½ mile radius and bike corridors within a three (3) mile radius of a transit terminal (center) or bus stop as an eligible transit expense. TGC will inventory existing conditions within the ½ mile of the Transportation Center to identify pedestrian/transit access improvements that are eligible for FTA funding, such as; sidewalks, ADA ramps, pedestrian lighting, and landscaping. The existing conditions inventory will quantify capital improvements and estimate construction costs. The inventory and cost will be an important component to the LONP request.

**Deliverables:** Documentation and costing of existing conditions inventory in Advanced Planning Report.

**Cost:** \$15,000

#### **Task 6: Capital and Operating Cost Estimates and Financial Framework**

- TGC will develop detailed capital cost estimates, based on federal criteria and local public works standards, for the Transportation Center, and pedestrian/transit access improvements, as part of a multi-year improvement program.
- TGC will estimate operating costs associated with the management and operation of the proposed Transportation Center.
- TGC will identify and provide supporting documentation to assist the City in its pursuit of federal and state funding to further the City's transit improvement goals. (Task order(s), as needed.)
- TGC will identify creative ways to utilize existing City resources, such as Community Development Block Grant funding, to support the City's transit related objectives.

**Deliverables:** Financial Framework Chapter in Advanced Planning Report, including state and federal funding opportunities.

Cost: \$12,000

#### **Task 7: Environmental Analysis**

- TGC will complete documentation to support a request for an FTA environmental finding for the proposed Transportation Center and the pedestrian-transit access improvements. As part of this activity, TGC will document floodplain, historical, hazardous materials, and other relevant factors. A recorded FTA environmental finding is required prior to use of federal funds for construction and is a pre-requisite for obtaining an LONP.

**Deliverables:** FTA Categorical Exclusion worksheet including supporting documentation for Transportation Center and pedestrian-transit access improvements

**Cost:** \$20,000

#### **Task 8: Quantification of Benefits**

- TGC will quantify or describe the benefits associated with the implementation of the Transportation Center and pedestrian/transit access improvements. Benefits will be calculated in terms of how the proposed project meets FTA, EPA, HUD and other funding agency goals and objectives, such as state of good repair, economic competitiveness, livability, sustainability and safety. This section will include a Sustainable Communities Partnership Benefit/Cost Analysis (BCA) that will satisfy TIGER (Transportation Investment Generating Economic Recovery) application requirements.

**Deliverables:** Quantification of Benefits Analysis Chapter in Advanced Planning Report.

**Cost:** \$7,000

#### **Task 9: Letter of No Prejudice Request**

- TGC will prepare documentation to support a FTA Letter of No Prejudice (LONP) request, based on the City's FTA grantee status, which will enable the FTA to issue a LONP for the proposed Transportation Center and pedestrian/transit infrastructure. The LONP will protect any local expenditure related to the purchase of land or the construction of the Transportation Center and pedestrian/transit access improvements, for future federal funding eligibility as long as those expenditures are made in accordance with federal guidelines. The LONP can protect the City's ability to reimburse such expenditures with future federal funding and/or use the value to match future federal funding.
- TGC will coordinate with local agencies to program the LONP capital improvements in the CAMPO Long Range Plan and short range Transportation Improvement Program

(TIP), and state TIP. TGC will coordinate with the FTA Regional Office to review the submitted LONP request and any additional follow up required to secure LONP approval.

**Deliverables:** LONP Request documentation and intergovernmental coordination.

**Cost:** \$15,000

**Task 10: URS Oversight**

- TGC will establish a working partnership with CMTA's URS Project Manager to ensure the City of Pflugerville's TDP is complete, accurate and timely. TGC will also evaluate if the data assumptions and methodology used to project future transit demand and resulting improvements are consistent with City of Pflugerville transportation objectives.

**Deliverable:** Monthly Memoranda of URS TDP progress, potential conflicts with City policy and deficiencies (if any).

**Cost:** \$9,000 (estimated \$1,500 per month for six (6) months)

*Compensation*

<b>BUDGET SUMMARY</b>	
<b>TASK</b>	<b>COST</b>
<b>PHASE I</b>	
1-Demand Analysis	\$20,000
2- Vehicles for Hire Ordinance	\$13,000
3- Establish City as FTA Grantee	\$18,000
<b>Phase I Total</b>	<b>\$51,000</b>
<b>PHASE II</b>	
4- Transportation Center Building Program and Site Selection Analysis	\$38,000
5- Existing Conditions Inventory for Pedestrian/Transit Access	\$15,000
6- Capital and Operating Cost and Financial Framework	\$12,000
7- Environmental Analysis	\$20,000
8-Quantification of Benefits	\$7,000
9- Letter of No Prejudice Request	\$15,000
10-URS Oversight	\$9,000

<b>Phase II Total</b>	<b>\$116,000</b>
<b>PROJECT TOTAL</b>	<b>\$167,000</b>

Budget is inclusive of all expense and is based on lump sum percent completion.