

EXHIBIT**"A"****CITY OF ROUND ROCK**

§

STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF TRAVIS

§

COUNTY OF WILLIAMSON

§

§

**SUPPLEMENTAL AGREEMENT NO. 1
TO "CITY OF ROUND ROCK AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES FOR
DEVELOPMENT OF A MASTER TRANSIT PLAN WITH
NELSON/NYGAARD CONSULTING ASSOCIATES"**

THIS SUPPLEMENTAL AGREEMENT NO. 1 to "City of Round Rock Agreement for Professional Consulting Services for Development of a Transit Master Plan with Nelson/Nygaard Consulting Associates," hereinafter called "Supplemental Agreement No. 1," is made by and between the City of Round Rock, Texas, a home-rule municipality, hereinafter called the "City" and Nelson/Nygaard Consulting Associates, hereinafter called the "Consultant."

WHEREAS, the City and Consultant executed the referenced "City of Round Rock Agreement for Professional Consulting Services for Development of a Master Transit Plan," hereinafter called the "Agreement," on December 18, 2014 by Resolution No. R-2014-2090; and

WHEREAS, the Agreement provided a completion date of August 31, 2015 for Consultant's services in Section 9.01, "Timetables," and the appended Exhibit "C;" and

WHEREAS, the parties have determined that the completion date shall be extended to no later than **November 15, 2015**; and

WHEREAS, the Consultant agrees that it has fully adhered to and will continue to fully adhere to certain federal contract clauses ("Federal Clauses") in the performance of this Agreement; and

WHEREAS, it is necessary to amend the completion date for the Scope of Services provided in the Agreement and incorporate certain Federal Clauses in said Agreement;

NOW THEREFORE, in consideration of the mutual promises and obligations in the Agreement and this Supplemental Agreement No. 1, the City and Consultant agree that said Agreement is amended and supplemented as follows:

I.

Section 3.01 of the Agreement is hereby amended to read as follows:

3.01 SCOPE OF SERVICES

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "A." Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, **in accordance with the Federal Clauses attached as Exhibit "D" and incorporated herein for all purposes**, and in accordance with due care and prevailing consulting industry standards for comparable services.

Section 9.01 of the Agreement is hereby amended to read as follows:

9.01 TIMETABLES

Unless otherwise indicated to Consultant in writing by City, or unless Consultant is unreasonably delayed in the orderly progress of its work by forces beyond Consultant's control, the following timetable structure and deliverable due dates shall apply: commencement shall occur no later than January 5, 2015 and shall be completed no later than **November 15, 2015**, and work shall be performed in reasonable conformity to Consultant's schedule tendered to City and attached as Exhibit "C."

II.

This Supplemental Agreement No. 1 shall amend the original Agreement only as set forth herein with no other changes in terms or conditions of the original Agreement.


[Signatures appear on the following page.]

IN WITNESS WHEREOF, the City and Consultant have executed this Supplemental Agreement to be effective as of the last date of due execution by both parties.

CITY OF ROUND ROCK, TEXAS

**NELSON/NYGAARD CONSULTING
ASSOCIATES**

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

By:  _____
Printed Name: BRIAN CANEPA
Title: DIRECTOR OF OPS
Date Signed: 07/28/15

ATTEST:

By: _____
Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: _____
Stephan L. Sheets, City Attorney

Federal Clauses

The Consultant agrees to adhere to each of these Federal Clauses and include these clauses in each sub-consultant contract. It is further agreed the clauses shall not be modified, except to identify the sub-consultant who will be subject to its provisions.

1) NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The City and Consultant acknowledge and agree, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any sub-recipient, lessee, third party contractor, or other participant at any tier of the Project.

2) FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

- a) The Consultant acknowledges and agrees that, The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Consultant's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Consultant certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Consultant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
- b) If the Consultant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Consultant the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

EXHIBIT "D"

3) GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- a) The Consultant certifies none of its business(es), its principals or its affiliates, are excluded or disqualified from participating in federally funded contracts as required by 49 C.F.R. Part 29.
- b) By signing the contract and any subsequent supplemental agreements, the bidder or proposer certifies as follows:
 - i) The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4) RESOLUTION OF DISPUTES, BREACHES OR OTHER LITIGATION

The City's requirements are found in the Agreement signed between the City and the Consultant.

5) TERMINATION

The City's termination requirements are found in the Agreement signed between the City and the Consultant. The Consultant understands if the Federal Government suspends or terminates all or part of the City's Federal assistance the project may or may not continue.

6) ACCESS TO THIRD PARTY CONTRACT RECORDS

- a) The Consultant agrees to provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- b) The Consultant agrees to permit any of the foregoing parties to reproduce or to copy excerpts and transcriptions as reasonably needed.
- c) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

EXHIBIT "D"

7) **LOBBYING**

- a) In accordance with 49 C.F.R. Part 20 the Consultant must sign the following certification upon submission of response to this RFQ. The Standard Form-LLL "Disclosure Form of to Report Lobbying" is attached at the end of these Federal Clauses.
- b) The undersigned certifies, to the best of his or her knowledge and belief, that:
- i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-Consultants shall certify and disclose accordingly.
 - iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature



Date

07 12 2015

Printed Name and Title

BRITAN CANBY, DIRECTOR OF OHS

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8) **CIVIL RIGHTS REQUIREMENTS**

The Consultant agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a) Nondiscrimination in Federal Public Transportation Programs

The Consultant agrees to comply, and assures the compliance of each sub-contractor or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b) Nondiscrimination – Title VI of the Civil Rights Act

The Consultant agrees to comply, and assures the compliance of each sub-contractor or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Consultant agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Consultants,” and any other applicable Federal directives that may be issued.

c) Equal Employment Opportunity

The Consultant agrees to comply, and assures the compliance of each sub-contractor or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Consultant also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

i) General

The Consultant agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Consultant agrees to take affirmative action to ensure applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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- ii) Equal Employment Opportunity Requirements for Construction Activities
For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Consultant agrees to comply and assures the compliance of each sub-Consultant, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.
- d) Nondiscrimination on the Basis of Sex
The Consultant agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations. "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.
- e) Nondiscrimination on the Basis of Age
The Consultant agrees to comply with all applicable requirements of:
 - i) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
 - ii) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.
- f) Access for Individuals with Disabilities
The Consultant agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Consultant also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the

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administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Consultant agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- iv) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- vi) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

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- xi) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- g) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections
To the extent applicable, the Consultant agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
- h) Access to Services for Persons with Limited English Proficiency
The Consultant agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Consultants' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.
- i) Environmental Justice
The Consultant agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
- j) Other Nondiscrimination Laws
The Consultant agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

EXHIBIT "D"

9) **DISADVANTAGED BUSINESS ENTERPRISES**

- a) This contract is subject to the requirements of Title 49, C.F.R. Part 26, Participation by DBEs in Department of Transportation Financial Assistance Programs. The agency's overall goal for DBE participation is 18 %.
- b) **A separate contract goal has not been set for this procurement; however the City encourages use of DBE firms and small businesses whenever possible.**
- c) Proposers are required to document when a DBE firm is used. The following is required information:
 - i) The names and addresses of DBE firms that will participate in the contract;
 - ii) A description of the work that each DBE will perform;
 - iii) The dollar amount of the participation of each DBE firm participating;
 - iv) Commitment to use a DBE sub-consultant whose participation it submits to meet a contract goal must be submitted on the Contractor/Respondent Certification form (attached at the end of these Federal Contract Clauses); and
 - v) Confirmation from the DBE it is participating in the contract as provided on the Contractor/Respondent Certification form must be submitted on the DBE Subcontractor Certification form (attached at the end of these Federal Contract Clauses).
- d) **Proposers must present the information required above with initial proposals.**
- e) The Consultant must promptly notify the City whenever a DBE sub-consultant performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE sub-consultant to perform at least the same amount of work. The contractor may not terminate any DBE sub-consultant and perform that work through its own forces or those of an affiliate without prior written consent of the City.

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10) CLEAN AIR

- a) Except to the extent the Federal Government determines otherwise in writing, the Consultant agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:
 - i) The Consultant agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Consultant agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Consultant further agrees any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
 - ii) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Consultant agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.
- b) The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

11) CLEAN WATER

- a) Except to the extent the Federal Government determines otherwise in writing, the Consultant agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:
 - i) The Consultant agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

EXHIBIT "D"

- b) The Consultant agrees to report each violation to the City and understands and agrees the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

12) ENERGY CONSERVATION

- a) The Consultant agrees to comply with applicable mandatory energy standards and policies of State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 et seq., except to the extent that the Federal Government determines otherwise in writing.
- b) As applicable, the Consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, in compliance with FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

13) CHANGES TO FEDERAL REQUIREMENTS

The Consultant shall, at all times, comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to comply shall constitute a material breach of this contract.

14) INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

The preceding provisions include certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the City requests which would cause the City to be in violation of the FTA terms and conditions.

EXHIBIT "D"