DEVELOPMENT OF EASTWOOD PARKING TERMINAL AND ASSOCIATED PEDESTRIAN-TRANSIT RELATED INFRASTRUCTURE LETTER OF INTENT/TERMS OF AGREEMENT

February 23rd, 2017

The Greater East End Management District (District), Lovett Commercial, Inc. (Lovett) and Six Westheimer, Ltd. (Developer) have engaged in discussion toward the integration of a federally eligible Intermodal/Transit Terminal Parking Facility as part of a larger mixed use development (Development). This Letter of Intent sets forth the preliminary understandings of the parties upon which they are willing to move forward to negotiate the various agreements set out herein. The District, Lovett and Developer, therefore, agree to the following principles in concert with the proposed project:

- **Federal Eligibility.** The District is responsible for applying for qualification of the public transportation components of the proposed of the Development (Facility) for federal eligibility through securing a Federal Transit Administration (FTA) Letter of No Prejudice (LONP) as provided in the certain Cost Sharing Agreement between the District and Lovett Commercial, Inc. dated February 6, 2016.

- **Anticipated Agreements.** It is anticipated that the following agreements will be needed to complete this transaction (Anticipated Agreements):

    1. Ground Lease for the Facility;
    2. Development and Facility Agreement/Facility Lease; and
    3. Operating and Management Agreement (OMA).

- **Ground Lease and Term.** The District and Developer will enter into a forty (40) year ground lease at an annual cost of $1 to be paid in one lump sum of $40, to secure the property for the Facility as needed to support the application for eligibility for federal funding for the Facility. The ground lease will cover the footprint of the parking garage and all federally eligible site related infrastructure (including without limitation sidewalks, functional landscaping, pedestrian lighting, Americans with Disabilities Act (ADA) ramps, and curbs). The ground lease will be written so as to provide the District the federally required "satisfactory continuing control of use of project property" for forty (40) years which is the useful life of the project. The ground lease will become effective with the execution of a Facility and Development Agreement between the parties. The District and Developer shall have the right to extend the ground lease for successive five (5) year terms and to continue leasing the Facility for public transit purposes (parking area) subject to mutual written agreement. Should the Developer be in violation of the Ground Lease with the District, which prevents the provision of public transit services and the utilization of Facility's public spaces, then the Developer will be required to reimburse the District for the unamortized remaining federal investment lease value, based upon a straight line 40-year depreciation schedule. Indemnities acceptable to the District will be included.

- **Facility Design.** The proposed Facility will be developed in accordance with District specifications based upon an approved FTA Categorical Exclusion, LONP, Engineering Report, and Budget to be prepared on behalf of the District by The Goodman Corporation (TGC) and approved by the Developer, which will be used to secure the LONP.

- **Development and Facility Agreement/Facility Lease ("DFA").** The DFA will be structured as a long term lease of the Facility from the Developer.

- **DFA.** The DFA will provide:

  1. That Developer will design and construct the proposed Facility at Developer's sole cost in advance of the availability of federal funding and in accordance with federal guidelines.

  2. That the Developer and District agree that the District will be responsible for the pursuit of federal funding, up to the agreed upon maximum, to reimburse developer expenditures for the federally eligible components of the Facility, subject to the Developer's agreement to provide financial resources to support pursuit of federal funding for a period not to exceed five (5) years after FTA approval of the LONP. Developer's advance of financial resources for the pursuit of federal funding, will be negotiated on an annual basis.

  3. That the Developer and District agree that the Developer will construct the facilities to be used for public transit purposes and own the facilities. The Developer will, therefore, have the right to any and all tax and depreciation benefits associated with legal ownership of the facility.

  4. The District will lease the public transit components of the Facility from the Developer in exchange for federal funding reimbursement for the capital costs associated with the construction of the Facility by the Developer.

  5. The District will retain a 100 percent legal interest in the lease. FTA will retain an 80 percent equitable interest in the lease. However, in the event that Transportation Development Credits (TDC's) are used to provide the local share for the project, the FTA will have a 100% equitable interest in the lease. At the expiration of the 40-year ground lease all District and federal interest will expire.

  6. That the DFA shall include a provision giving the District and Developer the right to extend the Facility lease for successive five (5) year terms and to continue leasing the Facility for public transit purposes subject to mutual written consent by the parties.

  7. That the District will oversee the design, procurement of construction, and construction of the Facility to ensure that the Facility meets the public transit objectives of the District and complies with federal guidelines (Management Services).

  8. The DFA will have a provision that requires the Developer to compensate the District an amount equal to 2% of the construction cost of the Facility, to be paid monthly in advance of services being provided in equal amounts during the course of design and construction of the Facility until issuance of a certification

of occupancy permit. The 2% fee to be paid by the Developer will compensate the District and/or its' consultant for the services to be more specifically outlined in the DFA.

9. That, the District may terminate the DFA and all other agreements with the Developer if the District in its sole discretion determines that the Developer is taking steps that in the District's opinion potentially expose the District as grantee to liability for paying back federal funding.

10. That the Developer will let the construction contract in Developer's name.

11. That the District must approve the following documentation to be prepared by the Developer:
    a. Schematic Design,
    b. 50%/100% Plans, Specifications, and Estimates (PS&E),
    c. Construction Documents/Bid Package (The bid package will incorporate all relevant federal provisions),
    d. Advertisement for bids; and
    e. The procurement analysis and award of contract.

12. District and Developer will agree on the maximum amount of federal funding to be pursued and used to support the Facility and include such amount in the DFA. Should the Developer be in violation of the DFA in any way which prevents the provision of public transit services and the utilization of Facility's public spaces, then the Developer will be required to reimburse the District for the unamortized remaining federal investment in the lease, based upon a straight line 40-year depreciation schedule. Indemnities acceptable to the District will be included.

13. The Developer has indicated that it will operate and manage the Facility in accordance with provisions contained within the "Operating and Management Agreement" (OMA).

14. The Operating and Management Agreement must be approved and entered into by the Developer and the District no later than ninety (90) days prior to the District's anticipated construction completion date of the Facility.

15. The Developer will provide the District a first lien on the property upon which the Facility is to be built as a pre-condition for the District reimbursing the Developer. This lien need not occur until federal funds are obtained for the project. Lovett will provide such additional security for the FTA repayment obligation as may be acceptable to the District in its reasonable judgment.

- **OMA.** The Operating and Management Agreement will contain the following provisions:

1. An agreed schedule of operating, maintenance and capital costs for the terminal including management fees at a level commensurate with prevailing commercial garage standards;

2. A provision that the Developer will be entitled to all "Net Revenues" derived from parking and/or retail spaces with "Net Revenues" to be defined in the OMA.

3. A provision that the Developer will provide the District evidence of acceptable insurance coverage as acceptable to the parties.

4. A provision that the Developer will undertake no activity which impedes the District's ability, either directly or through a contractor, to operate public transit services within and from the proposed terminal Facility.

5. A provision that the District will undertake no activity which impedes the Developer's ability to operate non-public parking and retail activity within the proposed Facility.

6. A provision that the public transportation spaces may be used for "incidental" non-public transportation purposes (i.e. parking functionally connected to adjacent METRO light rail or fixed route bus service) only in times when there is no demand for public transportation based utilization.

7. A provision that the District and Developer will meet quarterly to review the financial results from terminal operations, parking and retail rates, and any proposed modification to same and make adjustments to the agreed schedule of operating, maintenance and capital costs for the terminal.

8. A provision that upon default by the Developer and an agreed cure period, the District may terminate the OMA and make such other arrangements as the District deems acceptable for operation and management of the Facility.

9. A provision that the Developer will pay the District for the ongoing cost of monitoring federal compliance. The District agrees to engage a consultant to undertake the compliance work annually outlined in **Exhibit "A,"** attached hereto and incorporated herein and to pass such consultant's cost without mark up through to the Developer as the annual cost for the ongoing oversight and compliance. This ongoing oversight and compliance cost will be increased by 2.86% annually throughout the useful life of the project. The initial (year one) cost to the Developer of annual federal compliance and District oversight of the public transit portion of Facility operations is estimated not to exceed $8,900.

- **Letter of Intent.** The Developer and District agree to the milestones set forth below provided that fully executed originals are provided to the District before February 15, 2017:

    1. February 15, 2017: GEEMD Executive Committee Approval of this proposed Letter of Intent;

2. February 23, 2017: GEEMD Board approval of the Letter of Intent;

3. May 2017: GEEMD Board approval of the Ground Lease; and

4. June 2017: GEEMD Board approval of the Development and Facilities Agreement.

Developer and District agree that this Letter of Intent and all other agreements may be terminated by either party upon thirty (30) days written notice.

- **Time Line.** The anticipated schedule of key events toward accomplishing this public – private partnership is as follows:

Date	Activity
February 2017	Execute Letter of Intent
March 2017	Develop draft ground lease
May 2017	TIP amendment processed by H-GAC Execute ground lease Environmental Clearance determination received Develop draft Development and Facilities Agreement Advertise RFQ for design services
August 2017	STIP amendment processed by TxDOT Select engineer for design
September 2017	Letter of No Prejudice Approved Execute Development and Facilities Agreement Kick off design work
October 2017	Begin construction of NCI Building Develop draft maintenance and operating agreement
December 2017	Execute maintenance and operating agreement
January 2018	Begin construction of garage
May 2018	Complete garage and NCI building

This Letter of Intent is not binding but sets for the terms on which the parties are willing to negotiate the needed agreements. Either party may withdraw from negotiations at any time prior to execution of all Anticipated Agreements.

GREATER EAST END MANAGEMENT DISTRICT

By: _____
Name: DIANE SCHENKE
Title: PRESIDENT
Date: 4/12/17

LOVETT COMMERCIAL, INC.

By: _____
Name: FRANK M. KLIN
Title: PRESIDENT
Date: 2/22/2017

SIX WESTHEIMER LIMITED

By: _____
Name: FRANK M. KLIN
Title: PRESIDENT
Date: 2/22/2017

Exhibit "A"

GEEMD DESIGN/CONSTRUCTION COMPLIANCE EXHIBIT

THE GOODMAN CORPORATION

HOUSTON:
3200 Travis Street
Suite 200
Houston, TX 77006
(713) 951-7951

AUSTIN:
1715 6th Street
Suite 112
Austin, TX 78702
(512) 236-8002

THEGOODMANCORP.COM

PROJECT SCOPE

HARRISBURG TERMINAL COMPLIANCE

This scope will provide the Greater East End Management District (GEEMD) with services related to the post-construction on-going compliance of the Harrisburg Terminal. These activities will be completed in accordance with the Federal Transit Administration (FTA) Grant Management Circular 5010.1E and the interlocal agreement (ILA) entered into between the Greater East End Management District (GEEMD) and Lovett Commercial.

Task 1 – Operations and Maintenance Compliance Oversight

- TGC will, on an annual basis:
  - review the liability coverage for the facility, as provided by Lovett Commercial, for fire, flood, windstorm, and any other agreed upon coverages as stated within the ILA.
  - review the executed Operations and Maintenance Agreement and ensure that it is consistent with the latest FTA requirements per the established circulars.
  - review the incidental use concurrence of the project by FTA and ensure that the terms of the concurrence are still being met.
    - TGC will provide a memorandum annually that documents any findings (or a lack thereof) for the GEEMD compliance file.

- TGC will, on a quarterly basis:
  - review the operating, maintenance, capital, and management costs associated with the operations and maintenance of the facility to ensure they are fair and reasonable.
  - review the revenues generated from the parking garage and the offset against the costs (net revenue) to operate and maintain the garage, as outlined and defined within the ILA.
  - review the rates set for parking to ensure that parking for public transportation purposes is not discouraged.
  - document the state of good repair and functionality of FTA funded capital assets associated with the facility. The initial list of assets will be compiled as part of the construction close-out documentation.
    - TGC will provide a memorandum quarterly that documents any findings (or lack thereof) for the GEEMD compliance file.

Deliverables: Memorandum of findings on a quarterly and annual basis.

Cost: $8,900

Time Frame: Year of construction completion + 40 years.

TGC will complete the scope of work outlined above on a firm fixed-fee basis upon the completion of the defined deliverables. The annual fee is subject to a 3% annual escalation fee that is applied to the entire lump sum cost.

BUDGET SUMMARY		
TASK	DESCRIPTION	COST
1	Operations and Maintenance Compliance Oversight	$8,900