

**AMENDMENT
TO
JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND OPERATION AGREEMENT**

This Amendment to Joint Design, Development, Management and Operation Agreement (this "Amendment") is executed effective _____, 2020 (the "Amendment Effective Date") by and among **CITY OF AUSTIN, TEXAS**, a Texas home rule city and municipal corporation (the "City"), **WALLER CREEK LOCAL GOVERNMENT CORPORATION**, a local government corporation created pursuant to Chapter 431 of the Texas Transportation Code (the "LGC") and **WATERLOO GREENWAY CONSERVANCY**, a Texas non-profit corporation (the "Conservancy") (the City, the LGC and the Conservancy referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

A. The City, the LGC, and the Conservancy (formerly known as Waller Creek Conservancy) are parties to that certain Joint Design, Development, Management and Operation Agreement, dated April 16, 2014 (the "JDA"), which documents a long-term relationship between the Parties to promote and expand the public use of the Waller Creek District (the "District") and to develop the District.

B. By Council Resolution No. 20200827-077 (the "Resolution"), a copy of which is attached hereto as Exhibit A, the City authorized the LGC to approve certain City design and construction-related contracts for Projects (as defined in the JDA) and make certain determinations related to alternative delivery methods provided that the "Conditions of Authority Delegated" found under Section 3 of the Resolution and other requirements of the Resolution are met.

C. In accordance with the direction contained in Section II of the Resolution, the Parties now desire to amend the JDA to incorporate the terms of the LGC's expanded authority set forth in the Resolution.

NOW, THEREFORE, for and in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Parties agree as follows:

1. **Recitals; Defined Terms.** The above recitals are incorporated herein for all purposes. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the JDA.

2. **The City's Role.** The first sentence of Section 2.01B. of the JDA is deleted and replaced with the following:

"The City's role in the Projects is generally that of (i) being the owner of most of the Public District Sites, which ownership shall be retained unless changed in accordance with Applicable Law, (ii) being the active Governmental Authority involved in the Projects, (iii) being a Managing Party when designated in a Phase Plan, (iv) being a sponsor of the Common Goals to foster the Public Purpose, (v) improving the District ROWs, (vi) ensuring public funds spent for a public purpose, (vii) providing public money for the design and construction of City Improvements from the City Contribution, (viii) approving any budget for the LGC, and (ix) providing customary police, fire and emergency services within the District."

3. **The LGC's Role.** Section 2.01D. of the JDA is deleted and replaced with the following:

"D. The LGC's role in the Projects is to: (i) oversee the improvement of the District, the Work under Phase Plans, the use of City or LGC funds for Projects, the use of City funds in the operations budget for the Conservancy, and the day to day operations of the District, (ii) carry out the decisions made by the City and the Conservancy generally with respect to the Common Goals and Public Purpose, (iii) be a Managing Party when designated in a Phase Plan, (iv) issue, from time to time, debt to assist with funding of Projects, (v) provide City Council with periodic updates on the status of Projects, (vi) approve and authorize Conservancy contracts when the Conservancy is the Managing Party (vii) approve and authorize City contracts when the City is the Managing Party in connection with construction projects authorized by Council Resolution No. 20200827-077 (a copy of which is attached hereto as **Exhibit "H"** (the "**2020 LGC Authority Expansion Resolution**")), and (viii) make certain determinations related to the use of alternate delivery methods as authorized by the 2020 LGC Authority Expansion Resolution and set forth in Section 5.01A below; and (ix) have open meetings as required by Applicable Law."

4. **Construction Delivery Methods.** Section 5.01A. of the JDA is deleted and replaced with the following:

"A. A Public Improvement Project may be delivered by one of the various project delivery methods authorized by law, such as the traditional method of "design-bid-build" method procured by competitive sealed bids, or by one of the alternative delivery methods authorized by Chapter 2269 of the Texas Government Code, as may be amended (e.g. Competitive Sealed Proposals, Construction Manager at Risk, Construction Manager-Agent, Building Using Design Build, Design Build for Certain Civil Works Projects, and Job Order Contracting); provided, however, if the Managing Party considers a construction contract using a method authorized by Chapter 2269 other than competitive bidding, the Managing Party must obtain, before advertising, a determination that the method provides the best value for the City from a body authorized by law to make such a determination (either the City Council or the LGC in accordance with the 2020 LGC Authority Expansion Resolution). The remainder of this Article 5 is written based on the Construction Manager at Risk delivery method."

5. **Construction Contracts.** Section 5.01D. of the JDA is deleted and replaced with the following:

"D. After having obtained authority to do so from the LGC, the Managing Party may negotiate and execute the Construction Contract between the Managing Party and the selected Contractor for the applicable Public Improvement Project, which form of contract must have been approved by the City Attorney before the Managing Party procures, selects, awards, negotiates and executes any contract as a part of the applicable Phase Plan. Except as otherwise provided, amounts owing under Contracts and other such agreements (including costs, fees and expenses of Contractors) entered into by the Managing Party in connection with the construction of the applicable Public Improvement Project shall be funded as described in the applicable Phase Plan through the Project Disbursement Fund Account. The Managing Party shall require the Construction Manager at Risk and others performing the Work on a Public Improvement Project to obtain and

maintain and provide copies of all Permits and any bonds and insurance required by this Agreement (as supplemented by the applicable Phase Plans)."

6. **LGC Budget**. A new Section 10.05 is added to the JDA to read as follows:

"**Section 10.05** Subject to the approval of City Council, the City will budget sufficient funds to enable the LGC to implement the delegation of authority contained in this Agreement."

7. **EXHIBIT H**. The Resolution is hereby added to the JDA as **Exhibit H** thereto.

8. **MISCELLANEOUS**

8.1 The parties agree that this Amendment may be transmitted between them electronically or digitally. The parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the parties. The original document shall be promptly executed and/or delivered. This instrument may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(signature page follows)

IN WITNESS WHEREOF, each Party has executed this Amendment to be effective as of the Amendment Effective Date.

Conservancy:

WATERLOO GREENWAY CONSERVANCY

By:_____

Name:_____

Title:_____

LGC:

**WALLER CREEK LOCAL GOVERNMENT
CORPORATION**

By: _____
Name: _____
Title: _____

City:

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____

Approved as to form:

Assistant City Attorney

Exhibit A

[see attached copy of City Council Resolution No. 20200827-077]

RESOLUTION NO. 20200827-077

WHEREAS, Council previously created the Waller Creek Local Government Corporation (LGC) to further the work of the City and the Waterloo Greenway Conservancy (formerly the Waller Creek Conservancy, referred to in this Resolution as Conservancy) to implement the design approved by Council for the parks and other infrastructure within the Waller Creek District; and

WHEREAS, Council has extended the time of operation for the Tax Increment Reinvestment Zone No. 17 (TIRZ) to fund the parks and other infrastructure within the Waller Creek District and extend the projects to be completed using funds generated by this TIRZ; and

WHEREAS, the City and the Conservancy have found it appropriate for the LGC to approve certain City contracts necessary for the planned project work to be completed within the Waller Creek District, to ensure proper implementation of the design approved by Council for the parks and other infrastructure within the Waller Creek District; and

WHEREAS, the City Charter requires that Council approve certain City contracts; and

WHEREAS, from time to time, the Conservancy, the City and the LGC may want to consider using a method of project delivery other than competitive sealed bidding (also known as design-bid-build) in order to complete a project; and

WHEREAS, Texas law provides that the governing body of a governmental entity that considers a construction contract using a method other than competitive bidding must, before advertising, determine which method provides the “best value for the governmental entity”; and

WHEREAS, Texas law further provides that the governing body of a governmental entity may delegate its authority to determine the best value for the governmental entity to “a designated representative, committee, or other person”; and

WHEREAS, the Conservancy, the City, and the LGC should amend the Joint Development and Operating Agreements to reflect the delegations made in this Resolution and provide for any changes in processes and procedures, including changes in processes and procedures for the LGC, necessary to implement the direction and intent of this Resolution; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

- I. For projects consistent with the Council-approved design plan within the Waller Creek District, the City Council delegates authority to the LGC to act on behalf of the City Council as follows:
 - A. The LGC shall have the authority to authorize the negotiation, award, and execution of City contracts (contracts in which the City enters into a contract with a third party), including construction contracts, professional services agreements and other related contracts, provided that the City contracts are necessary for the Council-approved design and construction of the projects within the Waller Creek District, and provided the authorization is made in accordance with all laws applicable to the City and the *Conditions of Authority Delegated* under Section III of this Resolution.
 - B. The LGC shall have the authority to make a determination, by resolution, that the project delivery method provides the best value for the City, provided the

determination is made in accordance with all laws applicable to the City, including Chapter 2269 of the Government Code and Chapter 252 of the Local Government Code, and the *Conditions of Authority Delegated* under Section III of this Resolution.

- II. Council authorizes the City Manager to negotiate and amend the Joint Development and Operating Agreements to reflect the delegations made in this Resolution, and to provide for any changes in processes and procedures of the LGC and the Parties necessary to implement the direction and intent of this Resolution. The delegation in this Resolution is contingent upon full execution of such amendments by all of the Parties.
- III. The authority delegated under Section I above is conditioned upon the following *Conditions of Authority Delegated*:
 - A. A City contract that the LGC authorizes for negotiation, award, or execution must be necessary, as determined by City staff, for completion of the projects within the Waller Creek District under the Council-approved Design Plan for the Waller Creek District, as may be amended and approved by Council from time to time.
 - B. A City contract that the LGC authorizes for negotiation, award, or execution, if using Council-approved funding, the funds must be appropriated by

Council for the Waller Creek District within an approved annual budget or approved amendment to the annual budget.

C. A City contract that the LGC authorizes for negotiation, award, or execution must use City-standard contract forms, including:

- i. the City's standard Bidding Requirements, Contract Forms, and Conditions of the Contract for Construction, including the General Conditions and the Supplemental General Conditions of the Construction Contract; and
- ii. the City's standard Professional Services Agreement, including the General Conditions and Supplemental General Conditions of the Professional Services Agreement.

D. A City contract that the LGC authorizes for negotiation, award, or execution must be approved as to form by the City Attorney prior to consideration for negotiation, award, and execution by the LGC.

E. A City contract that the LGC authorizes for negotiation, award, or execution must be recommended for approval to the LGC by the Capital Contracting Officer, using a form consistent with the standard Request for Council Action (RCA) form, placed on the agenda of a meeting of the LGC.

F. The LGC shall have no power to, and shall not authorize a contract to buy, convey, lease, mortgage, or otherwise alienate or sell City property.

- G. The LGC shall have no power to, and shall not authorize an agreement between the City and another governmental entity.
- H. The LGC shall have no power to, and shall not authorize a contract unless it is pursuant to a written requisition from the Capital Contracting Officer and/or the head of the City office or department whose appropriation will be charged, and no contract shall be binding upon the City unless and until the Director of Finance certifies that there is to the credit of the office or department a sufficient unencumbered appropriation balance to pay for the contractual services for which the contract is to be issued.
- I. The LGC shall have no power to, and shall not authorize a contract unless the City's Capital Contracting Officer has obtained from the third-party bidder, respondent or offeror with whom a contract would be entered into, a signed affidavit of Non-Collusion, Non-Conflict of Interest and Anti-Lobbying, revised to include the LGC and approved as to form by the City Attorney and the LGC Attorney.
- J. A determination as to best value made by the LGC must be by resolution using the City's standard form resolution for best value determinations.
- K. A determination as to best value made by the LGC must be upon recommendation for approval to the LGC by the Capital Contracting Officer, using a form consistent with the City's standard RCA form.

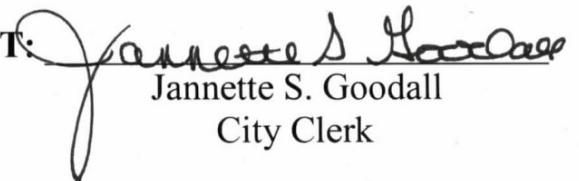
L. A determination as to best value made by the LGC must be approved by the City Attorney and the LGC Attorney prior to consideration by the LGC.

M. A determination as to best value made by the LGC must be a consideration and determination of best value solely *as to the City of Austin*, and without consideration of best value as it pertains to any other party or entity.

N. Nothing in this Resolution precludes the director of a City office or department or the Capital Contracting Officer from requesting Council consider, approve, or authorize a City contract.

ADOPTED: August 27, 2020

ATTEST:


Jannette S. Goodall
City Clerk