



Recommendation for Action

File #: 20-2504, **Agenda Item #:** 77.

8/27/2020

Posting Language

Approve a resolution delegating authority to the Waller Creek Local Government Corporation to make certain procurement determinations and to authorize the negotiation, award, and execution of City contracts necessary for the design and construction of the projects within the Waller Creek District (District), as defined in the Waller Creek District Joint Design, Development, Management and Operations Agreements (Agreements) and consistent with the Council-approved Design Plan for the District, and authorizing the negotiation and execution of amendments to the Agreements consistent with this delegation of authority.

Lead Department

Watershed Protection Department

Sub Department

Parks and Recreation Department

Prior Council Action:

April 28, 2011 - City Council approved Resolution No. 20110428-014 with a 6 - 0 vote, Council Member Spelman off the dais. Creating the Waller Creek Local Government Corporation (LGC), approving and adopting the corporation's Articles of Incorporation and Bylaws, and appointing initial directors.

October 18, 2012 - Council approved Resolution No. 20121018-068 with a 7 - 0 vote, affirming the selection for the design chosen by the Waller Creek Design Competition Jury, relating to the revitalization of the Waller Creek District.

June 20, 2013 - Council approved Resolution No. 20130620-021 and 20130620-023 with a 7 - 0 vote for each item, authorizing (1) negotiation and execution of a joint development agreement and related documents between the Waller Creek Conservancy, the City and the LGC concerning the revitalization of the Waller Creek District, and (2) directing public improvements in the Waller Creek District to be consistent with the Waller Creek Design Plan as developed by Michael Van Valkenburgh Associates/Thomas Phifer & Partners.

May 24, 2018 - Council approved Ordinance No. 20180524-012 approving Amendment No. 2 to the Project and Financing Plan for Tax Increment Financing Reinvestment Zone (TIRZ) No. 17 to update current project design and project cost estimates, to extend the length of time in which the TIRZ operates, and to provide the most recent estimates of underlying funding sources that are anticipated to pay for the construction of projects within the Waller Creek District. The projects are proposed to be expanded to include parks, stream and trail improvements to enhance the developed land in the Waller Creek District.

May 24, 2018 - Council approved Ordinance No. 20180524-013 authorizing the negotiation and execution of an amendment to the Waller Creek District Joint Design, Development, Management and Operation Agreement and related documents between the City of Austin, Waller Creek Conservancy, and the Waller Creek Local Government Corporation concerning the revitalization of the Waller Creek District; approving the Amended Design Plan; and waiving certain City Code provisions relating to naming of features and new facilities within the District in furtherance of the agreements between the parties.

May 24, 2018 - Council approved Resolution No. 20180524-014, 20180524-016, and 20180524-017 authorizing funding for improvements for the projects within the Waller Creek District, adding an additional City Manager designee to the Waller Creek Local Government Corporation and authorizing amendments to the Waller Creek Local Government Corporation Bylaws and Articles of Incorporation.

For More Information:

Kristin Pipkin, Program Manager, Watershed Protection Department, (512) 974-3315; Lisa Storer, Project Manager, Parks and Recreation Department, (512) 974-9479

Council Committee, Boards and Commission Action:

April 16, 2014 - Local Government Corporation approved the Joint Development Agreement.

May 24, 2018 - Waller Creek Tax Increment Finance Zone Board approved resolutions related to the Council items being considered on May 24, 2018.

August 7, 2020 - Waller Creek Local Government Corporation unanimously voted in support of the recommendation that Council expressly delegate to the LGC the authority to make procurement determinations and to negotiate, award and execute City contracts necessary for the design and construction of the projects within the Waller Creek District.

Additional Backup Information:

On April 28, 2011, Council approved Resolution No. 20110428-014, creating the Waller Creek Local Government Corporation (LGC) under Subchapter D, Chapter 431, Texas Transportation Code to act on behalf of the City to revitalize the Waller Creek District. Section 431.101 provides, “a local government corporation may be created to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments.” On June 20, 2013, Council approved Resolution No. 20130620-21, authorizing the negotiation and execution of the agreements between the Waller Creek Local Government Corporation, City and Waller Creek Conservancy (now known as the Waterloo Greenway Conservancy). The purpose of the agreements is to define the role of each party, the steps for project approval, procurement requirements, construction standards, operational considerations, and reporting requirements. The LGC approved the agreements on April 16, 2014.

In subsequent years, Council has authorized additional funding for the District and projects within the District that are consistent with the Design Plan.

Safety

On June 21, 2007, Council approved Ordinance No. 20070621-151, creating TIF Reinvestment Zone No. 17 in accordance with state law to finance the construction of flood control improvements along the lower Waller Creek. The purpose of the Waller Creek Tunnel is to provide 100-year storm event flood protection with no out-of-bank or roadway flooding for the lower Waller Creek watershed. The tunnel is approximately 5,600 feet long and ranges in size from 22 to 26 feet in diameter, diverting storm event flows at Waterloo Park and releases them into Lady Bird Lake.

In subsequent years, Council authorized various ordinances to support design and construction of the Waller Creek Tunnel.

Findings

Recently staff reviewed the ordinances and resolutions relating to the work within the District to determine if Council clearly authorized and delegated to the LGC certain authorities, necessary for the LGC to manage and authorize the negotiation, award and execution of City contracts necessary for the design and construction of

the projects within the District.

A City-held contracting method is being evaluated for the construction of the Waller Creek District | Creek Delta Project and may be considered for future projects. A City-held contracting method refers to an arrangement whereby the City, as opposed to the Conservancy, would enter into the contracts with third parties for the design and construction necessary to complete a project. All previous projects within the District, including Waterloo Park, have been delivered with the Conservancy as contract holder (defined as “Managing Party” within the Agreements). The review was performed by the Law Department with the assistance of the Watershed Protection Department and the Parks and Recreation Department, co-sponsors for the district improvements. This review determined that while the Joint Development Agreement between the City, the LGC, and the Waterloo Greenway Conservancy (then known as the Waller Creek Conservancy) was structured to allow for any of the parties to serve as the Managing Party to hold third party contracts, Council did not explicitly delegate to the LGC the power to authorize, on behalf of Council, that the City negotiate, award, and enter into a contract with a third party. Council authorizes City contracts. Council may also delegate this power to a local government corporation in certain circumstances, provided the delegation complies with applicable law, and provided that the delegation is expressly stated in a resolution adopted by Council.

In addition to authorizing City contracts, Council also makes certain determinations related to the use of alternate delivery methods for City construction projects. Texas law allows governmental entities to use a method other than the traditional competitive sealed bidding method, provided that the governing body, before advertising, determines which method provides the best value for the governmental entity. The law also provides that the governing body may delegate its authority to make such a determination to a designated representative, committee, or other person. We found upon review, that Council did not explicitly delegate to the LGC the authority to make these best value determinations necessary for the use of alternative methods for City contracts.

Recommendation

Staff recommends approval of this request, for Council to explicitly delegate authority to the LGC to authorize the negotiation, award and execution of City contracts necessary for the design and construction of the projects within the District, and to make certain procurement decisions, including determinations as to whether using an alternate project delivery method for a particular construction contract would provide the City with the best value, as this action is (1) consistent with the spirit of the partnership as well as the intent and the language of the original agreement, (2) allows the LGC to aid and act on behalf of the City Council to accomplish the intended, governmental purpose, and (3) provides a contracting framework that optimizes the strengths of the partnership and responds to the procurement and contracting needs to deliver the Council-approved Design Plan to the city of Austin.

Strategic Outcome(s):

Health and the Environment; Safety.