



First Amendment to the JDA

LGC Meeting | October 14, 2020

PURPOSE



Authorize LGC to make procurement determinations (alternative project delivery methods such as CMAR, Competitive Sealed Proposals)



Authorize the negotiation, award and execution of City contracts necessary for the design and construction of the projects within the Waller Creek District.

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."

RESOLUTION NO. 20200827-077

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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

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TO
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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."



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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

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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

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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)

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Thank you!