City of Austin

City Hall, 301 West 2nd Street, Austin, TX 78701 www.austintexas.gov

TO: Ed Van Eenoo, City of Austin Chief Financial Officer, Office of Financial Services

FROM: Kristin Pipkin, Project Management Supervisor, Watershed Protection Department
Lisa Storer, Project Manager, Parks and Recreation Department

DATE: March 8, 2022

RE: REQUEST CERTIFICATION OF AVAILABLE FUNDS FOR PROFESSIONAL SERVICE AGREEMENT BETWEEN THE CITY OF AUSTIN AND MICHAEL VAN VALKENBURG ASSOCIATES, INC.

Ed:
Council has authorized the Waller Creek Local Government Corporation (LGC) to approve City contracts for construction contracts, professional service agreements and other related contracts via Resolution No. 20200827-077. See Exhibit A for a copy of the resolution. One of the requirements of the Resolution is that the Chief Financial Officer certify the availability of funds for the contracts. On Wednesday, March 9, 2022, staff will be bringing forward their first request for LGC approval of the contract for the professional services of the firm of Michael Van Valkenburg Associates (MVVA).

To properly document that the funds are available, we are requesting that you sign the certification below:

I, Ed Van Eenoo, Chief Financial Officer of the City of Austin, certify that:

Funding in the amount of $5,000,000 is available in the Watershed Protection Department's Capital Budget for the Waller Creek District program.

Funding in the amount of $5,000,000 is available in the Parks and Recreation Department's Capital Budget for the Waller Creek District program.

Signed: Edvd Van Eenoo Date: 03/08/2022

CC: Kimberly Olivares, Tina Van Wie, Lisa Storer, Leela Fireside, Veronica Ocanas, Anupa Gharpurey, Vanorda Richardson, Steven Linett, Rick Wilson, Kitty Mak, Jorge Morales, Kimberly McNeeley, Mike Kelly, and Liana Kallivoka

Exhibit A

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

Jannette S. Goodall
City Clerk