



# City of Austin

*Founded by Congress, Republic of Texas, 1839*

*Financial Services Department - Capital Contracting, PO Box 1088, Austin, Texas 78767 Telephone 512/974-7181*

## **MEMORANDUM**

TO: Members of the Waller Creek Local Government Corporation

FROM: Rolando Fernandez Jr., Capital Contracting Officer, City of Austin Financial Services  
Department - Capital Contracting Division (FSD-CC)

DATE: March 8, 2022

RE: Professional Services Agreement with Michael Van Valkenburgh Associates, Inc. for  
the Waterloo Greenway Projects

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I write to outline how Item #3 of the March 9, 2022 Meeting of the Waller Creek Local Government Corporation (LGC) complies with the requirements of City Council Resolution No20200827-077 in which Council delegated authority to the LGC to authorize certain City contracts on Council's behalf.

Agenda Item #3 of the March 9, 2022 Meeting of the Waller Creek Local Government Corporation:

Request for Action for authorization to negotiation and execution of a professional services agreement between the City of Austin and Michael Van Valkenburgh Associates, Inc for the Waterloo Greenway Projects.

Item 3#: BACK-UP LINK – <https://www.austintexas.gov/edims/document.cfm?id=377889>

On March 9, 2022, my staff and I, in coordination with the Watershed Protection Department (WPD) and the Parks and Recreation Department (PARD), present the above Request for Action (RFA), which is the LGC equivalent to an RCA for Council.

Normally, only Council can authorize City contracts. But, as you know, in August of 2020, Council delegated authority to the LGC, for the LGC to authorize, on Council's behalf, the City's negotiation, award, and execution of certain City contracts with third parties (those that are necessary for the design and construction of the Waller Creek District) provided that the LGC's authorization follows all the laws the City has to follow and provided that the authorization meets all the Conditions of the Delegation of Authority found in Section III of the Resolution.

This provides some answers to what the LGC may be asking about Item #3 on the agenda, and further outlines how the RFA being presented to the LGC meets all of conditions under the Resolution.

### **1. Can the LGC authorize the negotiation and execution of this type of contract?**



Yes. The proposed contract is a professional services agreement. Under the Delegation of Authority Resolution, the LGC may authorize the City to negotiate, award, or execute a City contract (a contract in which the City enters into a contract with a third party) that is either a construction contract, a professional services agreement, or an agreement related to design and construction of a project. This request is for the authority to negotiate and execute a professional services agreement (PSA) with Michael Van Valkenburgh Associates, Inc. (MVVA) for professional landscape architectural, architectural, and engineering services for the Waterloo Greenway Projects.

**2. Can the LGC authorize a City contract for this scope and amount?**

Yes. The LGC may authorize a contract that is necessary for the Council-approved design and construction of projects within the Waller Creek District, also referred to as the Waterloo Greenway Projects. The scope of the proposed PSA with MVVA is an agreement to provide the landscape architectural, architectural, and engineering design and other professional services that are necessary for the design component of the Waterloo Greenway Projects. Thus the scope is within the LGC's authority. Regarding the amount of the agreement, one of the conditions of the Resolution requires the City's Chief Financial Officer to certify the availability of funds for the contract, in accordance with the City's Charter. The proposed PSA with MVVA is for an amount not to exceed \$10,000,000. The City's Chief Financial Officer has signed the attached document certifying the availability of funds for the proposed PSA with MVVA. Note that the LGC is not being asked to appropriate funds here. Council has already appropriated funds and will authorize all future appropriations necessary for the Waterloo Projects.

**3. What controls have been put into the RFA and the proposed PSA in an effort to ensure that the requested authorization will be made in accordance with the law?**

The Delegation of Authority requires that the LGC's authorization be made in accordance with all laws applicable to the City. The two elements of the authorization – the request for action (RFA) and the proposed professional services agreement (PSA) to be negotiated and executed – these both use standard City forms, follow standard City processes, and receive the required reviews and approvals by staff and by Law. As for the request for action (RFA), staff developed the RFA using the City's standard-form request for Council action (RCA). Thus the request before you is for authority to negotiate and execute a professional services agreement -- exactly the way a request is presented to Council. The RFA has all of the same content required in an RCA to Council, and has gone through the same reviews and approvals required to process an RCA to Council, including review by Law. As for the proposed professional services agreement (PSA) with Michael Van Valkenburgh Associates, Inc. (MVVA), the proposed PSA is the City-standard form professional services agreement that the City enters into with all of its design professionals. Thus it has all of the required terms and conditions necessary to follow the laws that the City must follow. Finally, once authorized, the negotiation and execution of the PSA will go through all of the same additional reviews and approvals required to finalize any agreement between the City and a third-party.

**4. The Resolution delegating authority comes with certain conditions. How would the authorization requested meet them?**



The LGC's authorization must be made in accordance with the Conditions of Authority Delegated under Section III of the Delegation of Authority Resolution. Below is an outline of how this RFA and the PSA meet all the relevant conditions -- Subsections "A" through "I" under Section III, Conditions of Authority Delegated:

- (a) City staff has determined that the proposed PSA with MVVA -- the agreement for professional design and other landscape architectural, architectural, and engineering services for the Waterloo Greenway Projects -- is a contract necessary for completion of the projects within the Waller Creek District under the Council-approved Design Plan for the Waller Creek District. *Meets Section III(A), Resolution's Conditions of Authority Delegated.*
- (b) The proposed PSA with MVVA will use Council-approved funding, and the funds are appropriated by Council for the Waller Creek District within an approved annual budget or approved amendment to the annual budget. *Meets Section III(B), Resolution's Conditions of Authority Delegated.*
- (c) The proposed PSA with MVVA uses the City's standard Professional Services Agreement. *Meets Section III(C), Resolution's Conditions of Authority Delegated.*
- (d) The proposed PSA with MVVA has been negotiated with staff and reviewed approved as to form by Law, before being presented for consideration to the LGC. *Meets Section III(D), Resolution's Conditions of Authority Delegated.*
- (e) The RFA is being recommended for approval by me, Capital Contracting Officer Rolando Fernandez, using the RFA form -- a form that is consistent with the standard Request for Council Action (RCA) form we use for Council. *Meets Section III(E), Resolution's Conditions of Authority Delegated.*
- (f) The proposed PSA with MVVA has no terms related to, and is not a contract to . . . buy, convey, lease, mortgage, or otherwise alienate or sell City property. *Meets Section III(F), Resolution's Conditions of Authority Delegated.*
- (g) The proposed PSA is an agreement between the City and MVVA and is not an agreement between the City and another governmental entity. *Meets Section III(G), Resolution's Conditions of Authority Delegated.*
- (h) The LGC's authorization will be pursuant to an RFA from me, Capital Contracting Officer, and from WPD and PARD -- the departments whose appropriation will be charged. In addition, the City's Chief Financial Officer has certified the availability of funds -- that there is sufficient unencumbered appropriation balance to pay for the design and professional services being contracted, per the City's Charter. *Meets Section III(H), Resolution's Conditions of Authority Delegated.*
- (i) I have prepared this cover memo to go with the RFA, and attached to it is an MVVA-signed Form 2 (a Non-Collusion, Non-Conflict of Interest and Anti-Lobbying form) revised to suit the type of procurement, revised to include the LGC in the conflict of interest section as



well as the City, and approved as to form by the LGC's General Counsel Deborah Trejo and by Assistant City Attorney Veronica Ocanas. *Meets Section III(l), Resolution's Conditions of Authority Delegated.*

This summarizes how the RFA being considered by the LGC, and the proposed PSA, ticks all the boxes of the Resolution Delegating Authority. For your reference, I have attached the RFA and two other supporting documents that I mentioned above.

Please feel free to call me with any questions.

Sincerely,

Rolando Fernandez, Jr., Capital Contracting Officer, FSD-CC Rolando Fernandez Jr.

Digitally signed by Rolando  
Fernandez Jr.  
Date: 2022.03.08 19:34:24 -06'00'

Attachments: (1) RFA, Agenda Item #3, March 9, 2022 Meeting of the Waller Creek Local Government Corporation  
(2) Form 2, Revised, Signed by Michael Van Valkenburgh Associates Inc.  
(3) Certification of Funds signed by the City's Chief Financial Officer

cc: Deborah Trejo, Kemp Smith LLP, General Counsel for the LGC

Cynthia Gonzales, Deputy Officer, FSD-CC  
Rick Wilson, Procurement Manager, FSD-CC  
Grant Wilson, Procurement Supervisor, FSD-CC  
Kitty Mak, Procurement Specialist IV, FSD-CC  
Kristin Kasper-Pipkin, Project Management Supervisor, Watershed Department  
Lisa Storer, Project Manager, Waller Creek District Program  
Jacqueline Ramos, Project Assistant & WCLGC Board Liaison, Waller Creek District Program  
Leela Fireside, Senior Assistant City Attorney, City of Austin Law Department  
Veronica Ocanas, Assistant City Attorney, City of Austin Law Department  
Ron Pigott, Assistant City Attorney, City of Austin Law Department

**WALLER CREEK LOCAL GOVERNMENT CORPORATION (LGC) DATE: March 9, 2022**

**Posting Language:**

Authorize negotiation and execution of a professional services agreement with Michael Van Valkenburgh Associates, Inc., for the Waterloo Greenway Projects in an amount not to exceed \$10,000,000. (District 1 and 9)

Consultant will comply with the City of Austin's Minority Owned and Women Owned Business Enterprise Procurement Program for new subconsultants; Consultant and its existing subconsultants that executed a contract with Consultant on or before the execution date the Waller Creek District Joint Development Agreement<sup>1</sup> are exempt from the MBE/WBE Procurement Program, per that Agreement.

**Amount and Source of Funding:**

Funding in the amount of \$5,000,000 is available in the Fiscal Year 2019-2020 Capital Budget of the Watershed Protection Department.

Funding in the amount of \$5,000,000 is available in the Fiscal Year 2019-2020 Capital Budget of the Parks and Recreation Department.

**Purchasing Language:**

By resolution adopted October 18, 2012, Council affirmed the Waller Creek Design Competition Jury's selection of Michael Van Valkenburgh Associates, Inc. (MVVA)/Thomas Phifer & Partners -- a qualifications-based selection process in accordance with the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code.

**Prior Council Action:**

October 18, 2012: Council approved a resolution affirming the Waller Creek Design Competition Jury's selection of Michael Van Valkenburgh Associates, Inc./Thomas Phifer & Partners for design and other professional services related to the revitalization of the Waller Creek District.

**For More Information:**

Inquiries about the Waller Creek Local Government Corporation meeting and posting language should be directed to Jackie Ramos, Waller Creek Local Government Corporation Liaison, at 512-974-3318 or [jacqueline.ramos@austintexas.gov](mailto:jacqueline.ramos@austintexas.gov).

NOTE: Inquiries specific to this RFA should be directed to Rolando Fernandez, 512-974-7749, Rick Wilson, 512-974-7261, Kristin Pipkin, Project Management Supervisor, 512-974-3315 or Lisa Storer, Project Manager, 512-974-9479.

**Council Committee, Boards and Commission Action:**

N/A

**Additional Backup Information:**

This request is for authority to negotiate and execute a professional services agreement with Michael Van Valkenburgh Associates, Inc., for the Waterloo Greenway Projects. If approved, Michael Van Valkenburgh Associates will serve as the City's prime consultant and will work with a set of pre-approved subconsultants to provide design and other professional landscape architectural, architectural, and engineering services for the Waterloo Greenway Projects.

The City, in partnership with the Waterloo Greenway Conservancy (WGC) and the Waller Creek Local Government

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<sup>1</sup> The Waller Creek District Joint Development Agreement (JDA) between the City of Austin, the Waterloo Greenway Conservancy (formerly known as the Waller Creek Conservancy) and the Waller Creek Local Government Corporation was authorized by Council on June 20, 2013 and executed by the parties on April 16, 2014. See exhibit titled "MBE/WBE Requirements."

Corporation, is developing the Waterloo Greenway (Greenway, formerly known as Waller Creek and the Chain of Parks) in downtown Austin. The Greenway is a 35-acre, open space in downtown Austin along lower Waller Creek between 15th Street and Lady Bird Lake and will feature a restored Waller Creek trail system and destination park spaces, including a revitalized Palm Park and Waterloo Park.

The Greenway is a Council-approved plan for the Waller Creek District. As such, numerous Council actions have been approved to support the Greenway, including the financial model, the Design Plan<sup>2</sup>, and the selection of Michael Van Valkenburgh Associates, Inc. as the prime consultant leading the design team for the Design Plan. Below is a list of key City Council actions supporting the vision to date:

**June 20, 2007:** Council created Waller Creek TIRZ No. 17 to finance the construction of the Waller Creek Tunnel Project.

**September 23, 2010:** Council approved a resolution directing the City Manager to explore a public-private partnership with the Conservancy for the development, management, and operation of the Waller Creek District.

**April 28, 2011:** Council approved the Memorandum of Understanding between the City and the Conservancy and created the Waller Creek Local Government Corporation (LGC).

**October 18, 2012:** Council approved a resolution affirming the selection of **Michael Van Valkenburgh Associates, Inc./Thomas Phifer & Partners** as chosen by Waller Creek Design Competition Jury relating to the revitalization of the Waller Creek District.

**June 20, 2013:** Council authorized negotiation and execution of the Waller Creek District Joint Development Agreement and related documents between the City, Conservancy, and the LGC concerning the revitalization of the Waller Creek District and **approved the Waller Creek Design Plan as developed by Michael Van Valkenburgh, Inc./Thomas Phifer & Partners.**

**May 24, 2018:** Council authorized an Amendment No. 2 to the Waller Creek TIRZ No. 17 Project and Financing Plan to add \$110M in tax incremental financing to support surface improvements in the District. **The updated Design Plan was also approved as part of this action.**

**August 27, 2020:** Council authorized the delegation of authority to the Waller Creek Local Government Corporation to approve, on behalf of City Council, the City's use of alternative project delivery methods as well as authorize the City to enter into contracts necessary for developing, designing, and constructing the Waterloo Greenway suite of projects.

All previous contracts for projects within the District, including Waterloo Park, have been executed by the Conservancy. The parties have decided that the City will contract directly with the professional service providers for the design of some or all of Greenway projects, including but not limited to the Confluence Project (formerly known as the Creek Delta Project). Therefore, for certain Greenway projects, the City will contract directly with the Michael Van Valkenburgh Associates, particularly when a project's scope requires the technical strength of the City to oversee and manage the work, or when the project involves specific watershed and sustainable design and construction expertise to successfully deliver the project. Below is a detailed description of the scope of work for the Confluence Project, as well as other projects within the Creek Delta Link, Connectivity Link, the Refuge and Pontoon Bridge that may be considered as future projects.

## **CREEK DELTA LINK**

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<sup>2</sup> Design Plan refers to the concept design plan prepared by Michael Van Valkenburgh, Inc./Thomas Phifer & Partners for the public improvement projects for what is now referred to as the Waterloo Greenway (formerly known as Waller Creek and the Chain of Parks), dated September 12, 2012, amended and modified June 20, 2013, approved by the Waller Creek Local Government Corporation, the Waterloo Greenway Conservancy and by the City of Austin pursuant to City Council Resolution 20121018-068, and amended pursuant to City Ordinance No. 20180524-013.

The Confluence will be the gateway to the Waterloo Greenway from Lady Bird Lake and the beloved Ann and Roy Butler (Butler) Trail system. The Creek Delta Link includes four distinct projects, the Confluence Project, the 4<sup>th</sup> – 5<sup>th</sup> Street connection, the Operations and Maintenance Facility Project, and Palm Park.

### **Confluence Project**

The Confluence Project stretches from Lady Bird Lake to 4th Street, meandering through a variety of urban landscapes and creating opportunities for diverse nature and a stable channel within Waller Creek. The hike and bike trail will follow the path of the creek, allowing users to experience the natural ecology of the tree canopy as well as more immersive experiences along the Creek's banks. At strategic locations, the trail system will connect at street level providing vital connectivity to downtown, the expanded Downtown Metro Rail Station, on-street bike infrastructure and the Rainey Street District.

### **4<sup>th</sup> – 5<sup>th</sup> Street Connection**

The 4<sup>th</sup> – 5<sup>th</sup> Street Connection will complete creek restoration and trail improvements between 4<sup>th</sup> and 5<sup>th</sup> Street along Waller Creek.

### **Palm Park Project**

Within the Creek Delta Link, the historic Palm Park will be revitalized. Calling on the history of surrounding neighborhoods, Palm Park will be an important gathering place for families and children in downtown. The park will have nature-based playscapes, splash pads, picnic and grilling areas, and important connections to East Austin.

### **Operations and Maintenance Facility Project**

The Operation and Maintenance Facility Project will restore the City-owned property between 4<sup>th</sup> and 5<sup>th</sup> Street and establish a new shared-use facility within the downtown zone to optimize Waller Creek Tunnel operations and improve daily servicing for Austin's downtown parks system.

### **CONNECTIVITY LINK: 5th to 11th Street**

Connecting the north and south portions of the Greenway will be achieved through creek and trail improvements between 5th and 11th Street. Project packages are not confirmed but will be based on constructability, adjacent development coordination and estimated project costs.

### **THE REFUGE**

The Refuge will be a completely new park between 7th and 9th Street where the current Austin Police Department Headquarters and Municipal Court is located. The Refuge will offer an immersive experience for adults and children to engage with the Creek. This will provide a vital programmatic space for efforts to connect all members of our community with meaningful experiences in nature.

### **PONTOON BRIDGE**

The Pontoon Bridge is a unique bridge connecting the north and south shore of Lady Bird Lake and the Butler Trail System to the Waller Creek District. The bridge is conceived to open up access to downtown, and beyond, to South Austin.

Michael Van Valkenburgh Associates, Inc. is located in Brooklyn, New York.

### **Strategic Outcome(s)**

Safety

Health and Environment



# City of Austin

City Hall, 301 West 2<sup>nd</sup> Street, Austin, TX 78701

[www.austintexas.gov](http://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: Ed 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



**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.

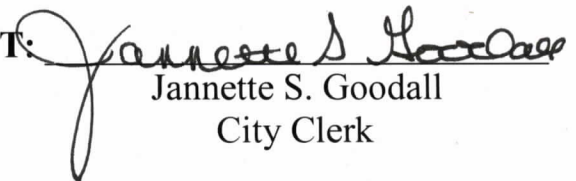
L. A determination as to best value made by the LGC must be approved by the City Attorney and the LGC Attorney prior to consideration by the LGC.

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



## FORM 2 - Non-Collusion, Non-Conflict of Interest and Anti-Lobbying *Revised for Consultant/PSA Not Procured Via Standard RFQ*

**Consultant:** Michael Van Valkenburgh Associates, Inc., Landscape Architects, P.C.

**Contract Name/Project:** Professional Services Agreement for the Waterloo Greenway Projects

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For purposes of these requirements:

The term “**Consultant**,” as used herein, includes the individual or business entity entering into a contract with the City of Austin and includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Consultant, and anyone or any entity acting for or on behalf of the Consultant, including a subconsultant in connection with the contract.

The terms “**City**” and “**Owner**” are synonymous.

1. **Anti-Collusion Statement.** The Consultant has not and will not in any way directly or indirectly:
  - a. colluded, conspired, or agreed with any other person, firm, corporation, consultant or potential consultant to the amount of this contract or the terms or conditions of this contract.
  - b. paid or agreed to pay any other person, firm, corporation, consultant or potential consultant any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached contract.
2. **Present Knowledge.** Consultant is not presently aware of any potential or actual conflicts of interest regarding this contract, which would prevent Consultant from advancing the best interests of OWNER in the course of the performance of the Contract.
3. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Consultant is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
4. **Waller Creek Local Government Corporation.** As those terms are defined in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Consultant is an official or employee of the Waller Creek Local Government Corporation (WCLGC) or is related to any WCLGC official or employee within the first or second degree of consanguinity or affinity.
5. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Consultant:

- a. does not have an employment or other business relationship with any local government officer of OWNER or a family member of that officer that results in the officer of family member receiving taxable income;
- b. has not given a local government officer of OWNER one or more gifts, other than gifts of food lodging transportation or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve-month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Consultant; and
- c. does not have a family relationship with a local government officer of OWNER in the third degree of consanguinity or the second degree of affinity.

As required by Chapter 176, Consultant must file the Conflicts of Interest Questionnaire with the Purchasing Department no later than the seventh business day after the commencement of contract discussions or negotiations with the City or the submission of a Bid, response to a request for proposals, or other writing related to a potential contract with OWNER. The questionnaire must be updated not later than the seventh day after the date of an event that would make a statement in the questionnaire inaccurate or incomplete. There are statutory penalties for failure to comply with Chapter 176.

6. **Pursuant to Texas Government Code §2271.002**, the City is prohibited from contracting with any “company” for goods or services unless the following verification is included in this Contract.
  - a. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
  - b. If the Consultant qualifies as a “company,” then Consultant verifies that it:
    - i. does not “boycott Israel”; and
    - ii. will not “boycott Israel” during the term of this Contract.
  - c. Consultant’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.
7. **Consultant certifies that it is aware of City Council Resolution No. 20191114-056**, which prohibits the City from contracting with entities that engage in certain practices related to conversion therapy. By responding and accepting this Contract, the Consultant agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or contracting with another entity to conduct LGBTQ+ conversion therapy; and that (2) if the City determines in its sole discretion that Consultant has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.
8. **Pursuant to Texas Government Code Chapter 2274**, Consultant certifies that if it has or will have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities



as a result of any City contract, that Consultant is not:

- a. owned by or the majority of stock or other ownership interest of its firm is not held or controlled by:
  - i. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - iii. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

9. Pursuant to Texas Government Code Chapter 2274, Consultant certifies that, if it has 10 or more full-time employees, Consultant: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the resulting contract against a firearm entity or firearm trade association.

10. Pursuant to Texas Government Code Chapter 2274, Consultant certifies that, if Consultant has 10 or more full-time employees, Consultant: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

**SIGNATURE OF THE CONSULTANT CERTIFYING THE ABOVE STATEMENTS**

I, Gullivar Shepard, whose title is partner, represent that I am authorized to legally bind Michael Van Valkenburgh Associates, Inc., Landscape Architects, P.C., certify the above statements by and on behalf of the firm of Michael Van Valkenburgh Associates, Inc., Landscape Architects, P.C. (Consultant).

SIGNED: By: \_\_\_\_\_

Date: 3/8/2022

Name Gullivar Shepard

Title Partner

Approved as to form:

Veronica Ocañas

Veronica Ocañas  
Assistant City Attorney  
City of Austin

Approved as to form:

Deborah Trejo

Deborah Trejo  
General Counsel  
Waller Creek Local Government Corporation