

Waller Creek District

# **THE CONFLUENCE (FORMERLY CREEK DELTA) CONSTRUCTION PHASE PLAN**

Proposing Party: City of Austin



**waterloo  
greenway**

18 January 2023

COA CIP Project No. 12861.002

COA CIP Project Name: Waller Creek District – Creek Delta Link – Creek Delta



# City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection Department  
P.O. Box 1088, Austin, Texas 78767

18 January 2023

Cotter Cunningham  
Vice President  
Waller Creek Local Government Corporation (LGC)

RE: Waller Creek District: Confluence Construction Phase Plan

Dear Cotter:

Enclosed herewith you will find the Confluence Construction Phase Plan (Phase Plan) which includes improvements to Waller Creek from 4<sup>th</sup> St to Lady Bird Lake. The work includes environmental restoration and construction of new bicycle and pedestrian connections to transit hubs and destinations along lower Waller Creek. See **Exhibit A** for the Project Design Materials. Please refer to the enclosed **Exhibit G** for a Project Budget including identification of funding sources.

The Phase Plan project area is along Waller Creek from 4<sup>th</sup> St to Lady Bird Lake. The northern extent of the project is bounded to the east by the southbound I-35 frontage road and to the west by Sabine Street, while at the southern extent it is bounded to the east by River Street and to the west by Trinity Street. See **Exhibit B** for the Project Area Diagram.

The Joint Development Agreement, Section 3, identifies the documentation required for each proposed phase plan. The attached checklist identifies all the submission requirements including those applicable to this Phase Plan and where they can be found in this document.

If you have questions or concerns, please let me know and we will address them quickly.

Sincerely,

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Ms. Kristin Pipkin  
Waller Creek District Project Management Supervisor  
Watershed Protection Department, City of Austin  
**Proposing Party/City Representative**

Date



# City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection Department  
P.O. Box 1088, Austin, Texas 78767

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Mr. Kevin Johnson  
Project Management Supervisor  
Parks and Recreation Department, City of Austin  
**Proposing Party/City Representative**

Date

The Phase Plan described in this document has been reviewed and approved specific to the scope described herein.

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Mr. Cotter Cunningham  
Vice President  
Waller Creek Local Government Corporation  
**LGC Representative**

Date

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Jesús Aguirre  
Chief Executive Officer  
Waterloo Greenway  
**Responding Party**

Date

# PHASE PLAN PROPOSAL CHECKLIST

Project: Waller Creek District -

## THE CONFLUENCE (FORMERLY CREEK DELTA) CONSTRUCTION PHASE PLAN

PAGE #	JDA SECTION*	TOPIC	DESCRIPTION	EXHIBITS
N/A	3.03 B.	Responding Party Review		
N/A		Cover Letter		
N/A		Front Cover		
N/A		Table of Contents		
N/A		Check List		
1	3.04 A.1	General	Exec Summary - general outline of the project	
4, 17			Schedule with milestones & projected completion	Exhibit C
4, 19			Implementation plan	Exhibit E
3, 18	3.04 A.2 (i)	Identify Team	List all professionals and their discipline	Exhibit D
5, 22	3.04 A.2 (ii)	Construction Delivery Method	Proposed Construction Delivery Method	Exhibit F
4	3.04 A.2 (iii)	Designate the Reviewer of Construction Schedule	Project Director or Managing Party	
1, 12	3.04 A.2 (iv)	Design Material	Prelim site plans, architectural plans, elevations, other design materials	Exhibit A
16	3.04 A.3	Project Area Diagram	Map of District showing Limits of Phase Plan Area	Exhibit B
6, 25	3.04 A.4	Project Budget	All Phase Plan costs including allowances and contingencies	Exhibit G
7		Including:	List of funding sources	
7			List where funds are to be held	
7, 44			List constraints on use of funds	Exhibit J
9, 85			Post construction budget - capital repairs, operating and maintenance budgets	Exhibit M
8	3.04 A.5	Cost Overrun Plan	Identify how any cost overruns will be funded	
8	3.04 A.6	Compliance with Foundational Articles	If the proposed project does not comply with the terms of the JDA, the proposed modification to the JDA is provided here	
8, 27	3.04 A.7	Third Party Agreements	Outline any third-party agreements that will need to be obtained	Exhibit I
9, 77	3.04 A.8	Procurement Process Requirements	If funded in part by the City, comply with City Code and other applicable law	Exhibit K
			Local Government Code Sections 252 and 271	
			Texas Transportation Code Chapter 432	
9, 22	3.04 A.9	MWBE Participation	If funded in part by the City, outline plan	Exhibit F
9, 80	3.04 A.10	Public Improvement Projects/Approvals and Permits	Identify responsibilities for obtaining approvals from Government Authorities for design and construction	Exhibit L
9	3.04 A.11	Operations & Maintenance	Plan for obtaining approvals/permits and for paying for operations and maintenance	



# PHASE PLAN PROPOSAL CHECKLIST

PAGE #	JDA SECTION*	TOPIC	DESCRIPTION	EXHIBITS
10	3.04 A.12	ID and Mapping Easements	Identify and map all easements and other real property interests	
7, 27, 44	3.04 A.13	Requirements on Use of Funds	Identify any requirements that apply to the use of tax-exempt obligations, grants or other funds	Exhibits I & J
10, 86	3.04 A.14	Insurance and Bonding	Provision of insurance and bonding in Article 9	Exhibit N
10	3.04 A.15	Use by City	Identify terms for use by the City	
10	3.04 A.16	Activities and Rates	Identify activities by groups	
10	3.04 A.17	Maintenance in ROW's	Identify of maintenance of District ROW's	
10	3.04 A.18	Utilities	Identify how utilities will be provided, cost of services, metering etc	
9, 85	3.04 A.19	Operations and Maintenance	Identify operations and maintenance standards	Exhibit M
10	3.04 A.20	Revenue Source and Fees	Create a pro forma re fees, licensing to cover Operation Expenses	
11	3.04 A.21	Commercial Design Standards	Identify if Comm Design Stds apply or waived	
11	3.04 A.22	License Agreements	Identify if License Agreements apply	
11	3.04 A.23	Naming Rights	Identify any license agreements necessary for naming rights	
11	3.04 A.24	Change in Ownership	Identify if there is a proposed change in ownership of a Public District Site	
11, 26	3.04 A.25	Capital Needs Timing	Identify the capital needs timing for City Planning purposes	Exhibit H
11	3.04 A.26	Payment to PARD or other City Departments	Identify how payments will be made to PARD or other City Depts for their operations	
11	3.04 A.27	Public Accessibility	Identify public accessibility and provisions thereof	
11	3.04 A.28	Timing of transfers	Identify timing of transfers of improvements and land	
11	3.04 A.29	Maintain natural space	Identify the ways projects will be designed to maintain natural space	
11	3.04 A.30	Maintain flexibility of City owned properties	Identify how the flexibility of City Owned properties will be maintained	
11	3.04 A.31	Issues related to alcohol use	Identify any desired exemptions of City Code or park rules	
N/A	3.04 A.32	Other Relevant Info		

\*THIS CHECKLIST IS BASED ON THE WALLER CREEK DISTRICT JOINT DESIGN, DEVELOPMENT, MANAGEMENT AND OPERATION AGREEMENT (JDA) DATED APRIL 16, 2014 AND THE AMENDMENT DATED AUGUST 27, 2020.

**Waller Creek District**

**THE CONFLUENCE (FORMERLY CREEK DELTA) CONSTRUCTION PHASE  
PLAN**

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## THE CONFLUENCE (FORMERLY CREEK DELTA) CONSTRUCTION PHASE PLAN

### Project Identification:

**Title:** The Confluence (formerly Creek Delta) Construction Phase Plan (“Phase Plan” or “Construction Phase Plan”)

**Location:** Along Waller Creek from Lady Bird Lake to 4th Street

**Date:** January 18, 2023

Unless otherwise specified herein, section reference shall refer to that certain Joint Design Development, Management and Operation Agreement by and among the City of Austin (“City”), Waller Creek Conservancy (“WCC”) and Waller Creek Local Governmental Corporation (“LGC”), dated April 16, 2014 and the Amendment dated August 27, 2020 (the “JDA”).

Effective August 14, 2019, the non-profit corporation formerly known as Waller Creek Conservancy (“WCC”) became known as Waterloo Greenway Conservancy and all references in this Addendum to Waller Creek Conservancy from and after that date shall mean Waterloo Greenway Conservancy (“WGC”).

In previous phase plans, this project has been referred to as “Creek Delta” and “Creek Mouth”. Moving forward, the project outlined in this Phase Plan will be referred to collectively as “The Confluence”.

### EXECUTIVE SUMMARY (3.04 A.1)

Waterloo Greenway includes a one-and-a-half mile urban creek and riparian ecosystem that meanders southward from Waterloo Park at 15th Street along the eastern edge of downtown Austin ending at Lady Bird Lake. Once complete, Waterloo Greenway will total 35 acres of connected urban green space and will feature four distinct beautifully designed park spaces, pedestrian and bicycle paths, a revitalized creek, and other urban amenities – a place where the environment, culture, health, adventure, and diversity converge. The revitalized Waller Creek will renew the natural environment, foster the creative arts, and nourish authentic and uplifting experiences that reflect Austin’s diversity and dynamic spirit.

The Confluence section of Waterloo Greenway is an approximately 14-acre green space and creek reconstruction along Waller Creek in Austin from Lady Bird Lake to 4<sup>th</sup> Street. This part of the program includes one mile of pathways, trails and bridges creating a cohesive and accessible circulation network enabling a new downtown district. There will be top-of-bank pathways and creek level elevated walkways allowing a unique way of traversing through the City. Eleven new trail connections to adjacent rights-of-way will be created through this design; strategically placed to connect to important downtown amenities such as the Emma S. Barrientos Mexican American Cultural Center, the Ann and Roy Butler Hike-and-Bike Trail, the Rainey Street Historic District, the Austin Convention Center, Palm Park, the historic Palm School, the Lance Armstrong Bikeway, the Sabine St. Promenade, and the Capital Metro Downtown. In addition, The Confluence design work reconstructs a robust creek ecology to create an immersive public nature experience. Currently, the banks of the creek are in disrepair, evident by the eroded banks and undermined trail systems in the middle of the city. This work utilizes cutting edge reconstruction and restoration techniques to design the aquatic and riparian habitat along the creek. **Exhibit A, Project Design Materials** provides an overview of the project and shows key design elements.

The Construction Phase Plan is proposed by the City to perform the construction of creek restoration, trails, bridges, and associated improvements along Waller Creek from Lady Bird Lake to 4th Street (see **Exhibit B, Project Area Diagram**).

The Phase Plan Project Area includes the east and west banks along Waller Creek from Lady Bird Lake to 4th Street. The southern boundary includes The Butler Trail at Lady Bird Lake and continues north along Waller Creek to Cesar Chavez Street. This section includes three bridges, top of bank trail installation and repair, creek elevated walkway, and park space. The Project Area boundary advances under the Cesar Chavez Street Bridge past Iron Works on the east and the Austin Convention Center on the west bank. Here the elevated walkway continues through this narrow area toward Red River Street. The creek level elevated walkway advances under Red River Street Bridge to the eastern bank of Waller Creek at Palm Park. Here the walkway passes an area known as The Bend which includes the outfall of a stormwater quality treatment device in Palm Park. The Project Area continues up into a portion of Palm Park and connects to 2nd Street and 3rd Street. The reconstructed Austin Convention Center biofiltration pond is situated along the top of the western bank near 3<sup>rd</sup> Street. Moving north from Palm Park, a creek trail continues along the eastern bank of Waller Creek under the 3rd Street Bridge into the Cypress Grove area of the project between 3rd and 4th Streets. The eastern trail sweeps over Waller Creek at a bridge and meets the 4th Street trailhead across from the Sabine Street ROW. A top of bank trail on the west bank of Waller Creek extends from 3rd to 4th Street. From Lady Bird Lake to 4th Street, creek channel work and bank reconstruction and restoration will occur at varying degrees along both the east and west banks of Waller Creek. In addition, there are a few bank areas where the vegetation will be preserved as part of the project. The Project Area includes the western edge of Palm Park. The remaining area of Palm Park will be designed and constructed under future Phase Plans.

This Construction Phase Plan realizes the design work completed in the *Creek Delta Construction Documents, Permitting & Bidding Phase Plan* and *Addenda One through Five*. As part of the work outlined in this Phase Plan, the team will be pursuing SITES certification for The Confluence. SITES is a comprehensive rating system for sustainable and resilient landscape projects internationally. The Phase Plan will augment, incorporate, and advance the work done in previous phase plans, but not be duplicative of this work.

The Phase Plan utilizes construction management expertise of Jay-Reese Contractors, Inc. (Jay-Reese, Construction Team), the firm selected for construction services for this Project, as well as construction administration performed by Michael Van Valkenburgh Associates (MVVA, Landscape Architecture Team Lead) and the City of Austin Public Works Department (PWD Team). The PWD Team will support the project as the contract manager and owner's representative in the field.

This Phase Plan encompasses the following:

- Construction Administration and Post-Construction Administration
- Construction and Post-Construction of The Confluence
- Other Budget Items: Materials Testing

This project will require extensive coordination with Waterloo Greenway Conservancy and the City PWD Team. Other City agencies that will require coordination include but are not limited to: Austin Water (AW), Austin Energy (AE), Austin Transportation Department (ATD), Development Services Department (DSD), and Real Estate Services Department (RES). The project will also rely on coordination with other utility companies and adjacent property owners, including several that will be under construction.

All services performed under this Phase Plan shall be in accordance with the existing contractual agreements held by the City, applicable codes (local, City, County, State and Federal), including the City code, and accepted industry standards.

All Consultant documents shall be prepared using the English System of Weights and Measurements. It is assumed that CAD and PDF drawings are acceptable formats for submissions. Other file formats (e.g., MicroStation, AutoCAD Civil 3D) will be considered as needed on a case-by-case basis.

## **MAIN POINTS OF CONTACT**

### **Proposing and Managing Party:**

City of Austin (City)

Lead Sponsor: Watershed Protection Department (WPD)

Director: Jorge Morales, [jorge.morales@austintexas.gov](mailto:jorge.morales@austintexas.gov) (512-974-3438)

Project Management Supervisor: Kristin Pipkin, [kristin.pipkin@austintexas.gov](mailto:kristin.pipkin@austintexas.gov)  
(512-974-3315)

Project Manager: Diana Wang, [diana.wang@austintexas.gov](mailto:diana.wang@austintexas.gov) (512-974-7168)

Sponsor: Parks and Recreation Department (PARC)

Assistant Director: Liana Kallivoka, [liana.kallivoka@austintexas.gov](mailto:liana.kallivoka@austintexas.gov) (512-974-9455)

Project Manager: Lana Denkel, [lane.denkel@austintexas.gov](mailto:lane.denkel@austintexas.gov) (512-974-9414)

Project Management: Public Works Department (PWD)

Assistant Director: Eric Bailey, [eric.bailey@austintexas.gov](mailto:eric.bailey@austintexas.gov) (512-974-7713)

Project Manager: Joel Lewis, [joel.lewis@austintexas.gov](mailto:joel.lewis@austintexas.gov) (512-974-7730)

### **Responding Party:**

Waterloo Greenway Conservancy (WGC)

CEO: Jesús Aguirre, [jaguirre@waterloogreenway.org](mailto:jaguirre@waterloogreenway.org) (512-541-3520)

Director of Planning & Design: John Rigdon, [jrigdon@waterloogreenway.org](mailto:jrigdon@waterloogreenway.org)  
(512-541-3520)

Capital Projects Manager: Chris Perkes, [cperkes@waterloogreenway.org](mailto:cperkes@waterloogreenway.org) (512-541-3520)

### **Construction Team Lead:**

Jay-Reese Contractors, Inc. (Jay-Reese)

CEO: Ron Albee, [ralbee@jayreese.net](mailto:ralbee@jayreese.net) (512-829-5360)

Jay-Reese Point of Contact: Derek Eckhoff, [deckhoff@jayreese.net](mailto:deckhoff@jayreese.net) (512-829-5360)

**Landscape Architecture Team Lead:**

Michael Van Valkenburgh Associates (MVVA)

President and CEO: Michael Van Valkenburgh, Michael@mvvainc.com (718-243-2044)

Principal: Gullivar Shepard, gshepard@mvvainc.com (718-243-2044)

Project Manager and Point of Contact: Tim Gazzo, tgazzo@mvvainc.com (718-243-2044)

**Materials Testing Team Lead:**

ATLAS

Principal: Dale Rand, dale.rand@oneatlas.com (512-771-3667)

Asst. General Manager: Joe Fiello, joe.fiello@oneatlas.com (512-757-6352)

Project Manager and Point of Contact: Jimmy Baldwin, jimmy.baldwin@oneatlas.com  
(512-689-5903)

**SCHEDULE (3.04 A.1)**

The Notice to Proceed (N.T.P.) for The Confluence Construction Phase Plan is anticipated to occur on February 27, 2023, following approval of the Phase Plan by the Waller Creek Local Government Corporation, full execution of the construction contract, encampment outreach and clean-up on the creek, and receipt of pre-construction submittals from Jay-Reese. The services associated with the Phase Plan shall be provided from the end of February 2023-November 2025 for the construction duration and December 2025-November 2026 for post-construction. Jay-Reese, MVVA, PWD, and Atlas fees have been calculated based on the construction schedule, which is shown in greater detail in **Exhibit C, Project Schedule**. In accordance with 3.04 A.2(iii) of the JDA, the Managing Party will review and approve the construction schedule. Additional details on the schedule will be provided by Jay-Reese after execution of the construction contract.

**PERFORMANCE PERIOD**

The contracted total performance period is the next forty-five (45) months which includes thirty-three (33) months for construction and twelve (12) months for post-construction. A more detailed project schedule is shown in **Exhibit C, Project Schedule**.

**GENERAL SCOPE OF SERVICE REQUIREMENTS**

An organizational diagram of workflow is in **Exhibit D, Organizational Chart** that describes the relationship between the landscape architecture team, the contractor, City, and WGC. In addition, more detailed explanations of the scope of services and deliverables is in **Exhibit E, Implementation Plan** for construction administration, construction services, and materials testing.

**DESIGN TEAM & CONTRACTOR LIST (3.04 A.2 (i))**

The following contractor, landscape architect design team, PWD project manager and construction inspector, and materials testing team will be responsible for delivering The Confluence.

- Construction Contractor: Jay-Reese Contractors, Inc.
- Landscape Architect and Design Team Lead: Michael Van Valkenburgh Associates, Inc. (MVVA)
  - Permitting and Environmental Consulting: ACI Consulting (ACI)
  - Structural Engineer: Architectural Engineers Collaborative (AEC)
  - Accessibility Consultant: Altura
  - Civil Engineer: Wantman Group, Inc. (WGI), formerly Big Red Dog Engineering, Inc.
  - Local Landscape Architect: dwg (DWG)
  - Mechanical, Electrical and Plumbing Engineer: EEA Consulting Engineers (EEA)
  - Irrigation Design: James Pole
  - Local Ecologist: Lady Bird Johnson Wildflower Center (LBJWC)
  - Hydrologist: LimnoTech
  - Soil Scientist: Olsson
  - Geotechnical Engineer: Terracon
  - Lighting Design: Tillett
- Materials Testing: Atlas
- City Public Works Department (under internal City service agreement)
  - Project Manager: PWD Project Management Division
  - Construction Inspector: PWD Construction Services Division

### **CONTRACTING METHOD (3.04 A.2(ii))**

MVVA and their subconsultants will be contracted directly with the City under the Professional Services Agreement (PSA) that was executed in September 2022. An assignment to the existing MVVA PSA will be executed after approval of the subject Phase Plan. All the MVVA design team consultants and subconsultants identified by name in this project were selected prior to the execution of the JDA or have been selected utilizing methods that meet the City of Austin Ordinances for procurement of services. Any subsequent consultants will be selected utilizing the same.

The PWD Team, which includes a project manager from the PWD Project Management Division and a construction inspector from the PWD Construction Services Division are internal to the City and will work under a signed service agreement between PWD and WPD. Atlas was assigned from an approved City rotation list.

Jay-Reese will work with the City under a standard City construction contract that will be executed after approval of the subject Phase Plan. In accordance with requirements for City contracts, the request to the LGC for authorization to award and execute the construction contract is included as **Exhibit F, Request For Action (RFA)**.

## PROJECT BUDGET (3.04 A.4)

Exhibit G, Project Budget provides a detailed breakdown of the fees, a summary of the fees are as follows:

### 1. Construction Administration:

Professional Service Fees (MVVA Team):	\$5,909,244
Reimbursable Expenses (MVVA Team):	\$ 328,010
Project Management Fees (PWD PMD):	\$ 643,500
Construction Inspection Fees (PWD CMD):	\$ 828,120

**Total Professional Services Fees** \_\_\_\_\_ **\$7,380,864**

**Total Reimbursable Expenses** \_\_\_\_\_ **\$ 328,010**

### 2. Testing:

Materials Testing (Atlas Team):	\$ 348,347
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### 3. Construction (Jay-Reese)

Cost of Work (Base Bid + Alternates A and B)	\$63,752,983
Construction Allowances:	\$ 670,500

**Total Construction Cost** \_\_\_\_\_ **\$64,423,483**

### 4. Allowances, Contingencies, and Cost Overrun:

Unknown Conditions Allowance	\$2,500,000
AE Chilled Water Allowance	\$ 500,000
Telecommunications Relocation Allowance	\$ 300,000
Structural Assessment Allowance	\$ 60,000
Tree Care Survey Allowance	\$ 15,000

**Total Owner Allowances** \_\_\_\_\_ **\$3,375,000**

**Change Order Contingency (9%)** \_\_\_\_\_ **\$5,976,565**

**Cost Overrun Reserve (3%)** \_\_\_\_\_ **\$1,932,704**

**Grand Total for The Confluence Construction:** \_\_\_\_\_ **\$83,764,974**



Funding contributions toward The Confluence Construction Phase Plan from City, WGC, and federal funding sources will be provided in amounts not to exceed the following:

	<u>Funding Contribution</u>	<u>%</u>
<b>City of Austin (City)</b> _____	<b>\$ 62,252,080</b>	<b>74%</b>
Watershed Protection (WPD)	\$ 52,545,105	63%
Parks and Recreation (PARC)	\$ 2,310,772	3%
Development Services Department (DSD)		
Urban Forest Replenishment Fund*	\$ 5,266,185	6%
Austin Energy (AE)	\$ 1,330,018	2%
Austin Convention Center	\$ 500,000	1%
Austin Water (AW)	\$ 300,000	0.4%
<b>Waterloo Greenway Conservancy (WGC)</b> _____	<b>\$ 12,487,894</b>	<b>15%</b>
<b>United States Army Corps of Engineers (USACE)*</b> _____	<b>\$ 9,025,000</b>	<b>11%</b>
<b><u>Funding Total for The Confluence Construction:</u></b>	<b>\$ 83,764,974</b>	

\*DSD Urban Forest and USACE funding were jointly pursued by WGC and COA

As required by Section 3.04 A.25 of the JDA, **Exhibit H, Capital Needs Projection** addresses the prime scope of work and the projected funding needs, excluding Allowances, Change Order Contingency, and Cost Overrun Reserve.

### **FUNDING SOURCES & REQUIREMENTS/CONSTRAINTS ON FUNDS (3.04 A.4 & 3.04 A.13)**

Project invoices will be paid for by the City and reviewed by WGC. The funding split will be determined on an invoice-by-invoice basis. Depending on the scope of work, invoices may not follow the funding split for the overall Phase Plan outlined in the Project Budget section above. A detailed breakdown of City funding sources can be found in The Confluence Construction Phase Plan Funding Letter.

In addition to typical City funding source restrictions, several funding agreements were executed to establish the funding reimbursement timing, cost sharing requirements, and eligible scope. The Project Partnership Agreement (PPA) between USACE and WPD included as **Exhibit I, US Army Corps Project Partnership Agreement** establishes the City's cost sharing requirement and the scope of work, which includes the biofiltration pond and creek improvements between Cesar Chavez and 3<sup>rd</sup> Street.

Additional agreements involving City departments and WGC are included in **Exhibit J, Funding Agreements**, and summarized as follows:

- Confluence Funding MOU: WGC will reimburse the City (PARC) for their funding contribution during and after construction. This MOU was established prior to bid opening and includes a different construction cost and budget than the Project Budget section above. The funding commitments

reflected in the MOU are still valid.

- Urban Forestry MOU: DSD Urban Forest Replenishment will reimburse WPD for their funding contribution during and after construction (Urban Forestry MOU)
- Lattice Bridge No. 3 MOU: WGC and PARD are dedicating funding toward construction of Lattice Bridge No. 3
- ACC Pond MOU: Austin Convention Center is contributing funding toward the biofiltration pond

### **COST OVERRUN PLAN (3.04 A.5)**

In accordance with the JDA, the identification of the source of funds for the Cost Overrun Reserve are required. The Proposing Party must seek approval from the Responding Party to utilize Cost Overrun funding. The request to use Cost Overrun funds does not require LGC approval unless additional funding is needed. For The Confluence Construction Phase Plan, there is a Cost Overrun Reserve of \$1,932,704. Additionally, there is an Owner Allowance total of \$3,375,000 and Owner Change Order Contingency of \$5,976,565 held by the City and WGC team to address any changes or modifications to the construction project. These costs are detailed above in the Project Budget section.

### **COMPLIANCE WITH FOUNDATIONAL ARTICLES (3.04 A.6)**

Section 3.3 B of the JDA outlines the right of the parties to mutually agree to modification of foundational articles with respect to any phase of any project. In accordance with this section, and with the intent of formally making these changes in a revised JDA currently under negotiation, the parties agree to modify the following articles:

1. In accordance with Section 3.04 A.4 of the JDA, the parties agree to modify the requirement that 24 months of O&M funding be placed in the Project Disbursement Fund Account before construction authorization. The parties agree that at a date no later than one year prior to the park opening to the public, WGC and the City will agree on a new financial reserve structure for the completed Phase Plan areas. The new policy will be included in the updated JDA and O&M Agreements currently under negotiation and better align with the other operational and fundraising agreements for local non-profit partnerships.
2. In accordance with Section 3.04 A.19 of the JDA, the parties agree to modify the requirement that the operations and maintenance standards for the project be included with the current Phase Plan. The parties agree to finalize the operations and maintenance standards by March 15, 2023. The final Operations and Maintenance Agreement for the project will be added as an exhibit to the Phase Plan and presented to the LGC as an Addendum. The modified timing is consistent with the requirement to establish operations and maintenance standards prior to completion of the project.

### **THIRD PARTY AGREEMENTS (3.04 A.7)**

Pursuant to the JDA between City and WGC, any third-party agreements needed to execute the work in the phase plan are noted in the Phase Plan document. For The Confluence Construction Phase Plan, there will be one third party agreement that is referenced in the Funding Resources & Requirements/Constraints on Funding section above and described below.

The Project Partnership Agreement (PPA) between USACE and WPD included as **Exhibit I, US Army Corps Project Partnership Agreement**, establishes the City's cost sharing requirement and the eligible scope of work, which encompasses the biofiltration pond and creek improvements between Cesar Chavez and 3<sup>rd</sup> Street.

## **PROCUREMENT PROCESS REQUIREMENTS & MWBE PARTICIPATION (3.04 A.8 & 3.04 A.9)**

Pursuant to the JDA, any Project funded in part by the city must meet City ordinance and state law requirements for procurement, Local Government Code Sections 252, 271 and Texas Transportation Code Chapter 432. The Confluence construction contract is a City-held contract and followed the City Invitation for Bid (IFB) procurement process. The construction contract with Jay-Reese will be awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owner Business Enterprise Procurement Program) through the achievements of Good Faith Efforts with 4.5% MBE and 2.94% WBE participation. The City of Austin Small and Minority Business Resources (SMBR) Department has confirmed that Jay-Reese met the compliance plan requirements through Good Faith Efforts

General MWBE Participation requirement information outlined in the JDA can be found in **Exhibit K, JDA Procurement Requirements**.

All the MVVA design team consultants and subconsultants identified by name in this project were selected prior to the execution of the JDA or have been selected utilizing methods that meet the City of Austin Ordinances for procurement of services. Any subsequent consultants will be selected utilizing the same

## **APPROVALS & PERMITS (3.04 A.10)**

The Design Team led by MVVA has the responsibility of obtaining approvals and permits from governmental authorities for design and construction of Public Improvement Projects.

The official Notice to Proceed (N.T.P.) for construction work is contingent on the Site Development Permit (Creek Delta, SPC-2019-0400D) and USACE Nationwide Permits 25 and 27 which were obtained under the Creek Delta Construction Documents, Permitting & Bidding Phase Plan, **see Exhibit L, The Confluence Permits**. Building permits are anticipated in February 2023. Jay-Reese is responsible for obtaining ROW and excavation permits during construction.

Any minor site development permit corrections that result from the construction work proposed in the Phase Plan will be coordinated and addressed by the Design Team.

## **OPERATIONS & MAINTENANCE RESPONSIBILITIES & STANDARDS (3.04 A.11 & 3.04 A.19)**

WGC and the City share responsibility for the operations and maintenance of The Confluence and must coordinate on these activities upon completion of the project. In order to ensure effective management and communication, the parties will outline policies and procedures that govern these activities in **Exhibit M, Operations & Management Agreement for The Confluence**. The Operations & Maintenance Agreement will be included as an Addendum to the current Phase Plan as described in the Compliance with Foundational Articles section above.

### **ADJACENT PROPERTY ACQUISITION (3.04 A.12)**

All acquisitions either by fee simple or easement will follow City Real Estate Service's Standard Operating Procedures for approval, land plans, land title surveys, Environmental Site Assessment Plans I and II, and title policies. In accordance with the 3.04 A.28 of the JDA, any acquisitions either by fee simple or by easement will follow the Office of Real Estate's Standard Operating Procedures for approvals, land plans, land title surveys, Environmental Site Assessment Plans I and II, and title policies.

### **INSURANCE & BONDING (3.04 A.14)**

Insurance information can be found in **Exhibit N, Insurance Certificates**. Jay-Reese will provide bonding insurance for the construction as required by the construction contract.

### **ACTIVITIES & RATES (3.04 A.15 & 3.04 A.16)**

The WGC, as the operator of the completed project, will take responsibility for the programming of The Confluence upon completion. Programs will be established in accordance with the WGC's mission and feedback from the community. Special attention will be given to the programs that address issues of equity and inclusion of marginalized groups within the Austin community. In addition to many free programs, spaces will be rented from time-to-time by the WGC. These rates will be established through an analysis of existing comparable spaces in the region and will be updated on a regular basis.

The WGC will work with PARD, WPD, and other City Departments to allow City sponsored events in The Confluence limits that align with the mission of both the City and WGC.

### **MAINTENANCE OF DISTRICT ROW (3.04 A.17)**

Maintenance of the ROW is the role of the City of Austin, as noted in the JDA Article 4, Section 4.03 and 6.03, unless otherwise agreed upon through a license agreement between the parties.

### **UTILITIES (3.04 A.18)**

No utilities will be distributed to any vendor or park lessee as part of this Phase Plan.

### **REVENUE SOURCES & FEES (3.04 A.20)**

In order to maintain and operate the park at the highest level, the WGC will utilize opportunities within the park to generate revenue. These opportunities include, but are not limited to, ticketed special events, fundraisers, park area rentals, and concession opportunities. Rates will be established based on the market and timing/frequency of these opportunities and will be balanced with the core mission of serving the community by creating parks for all. Programming plans will be presented annually to and reviewed by the Waller Creek LGC. Revenue opportunities will comply with the JDA and all applicable law. A pro forma of how fees will cover estimated Operating Expenses will be included with the Confluence O+M agreement in the forthcoming addendum.

### **COMMERCIAL DESIGN STANDARDS (3.04 A.21)**

Unless otherwise indicated, commercial design standards outlined in the Waller Creek District Design Guidelines will be followed under this Phase Plan.

### **LICENSE AGREEMENTS (3.04 A.22)**

License agreements will be secured as required by the permitting process.

### **NAMING RIGHTS (3.04 A.23)**

WGC has identified recognition opportunities in The Confluence project limits. These opportunities include various architectural features, like the bridges, and park space of distinction. All naming rights will be established in accordance with the JDA and Foundational Articles.

### **CHANGE OF OWNERSHIP (3.04 A.24)**

There are no changes of ownership anticipated with this Phase Plan.

### **CAPITAL NEEDS TIMING (3.04 A.25)**

See Exhibit H, **Capital Needs Projection** addressing the anticipated project of the prime scope of work, which excludes Allowances, Change Order Contingency, and Cost Overrun Reserve.

### **PAYMENTS (3.04 A.26)**

Currently no payments from the City are anticipated for operations for this Phase Plan.

### **PUBLIC ACCESSIBILITY (3.04 A.27)**

The design of The Confluence will meet the requirement of the Texas Accessibility Standards (TAS) and City Code. This Phase Plan includes the scope of work by Altura Solutions, the accessibility consultant, to ensure the project follows applicable accessibility rules and standards.

### **TIMING OF TRANSFERS (3.04 A.28)**

There are no anticipated transfers of improvements or land to the City with this Phase Plan.

### **GREEN SPACE & FLEXIBILITY (3.04 A.29 & 3.04 A.30)**

A core element of the approved Project Plan calls for conserving and maintaining natural space. This will be a guiding principle for all work on the Chain of Parks including The Confluence. A goal of the design team has been to maintain flexibility with respect to City owned land.

### **ALCOHOL USE IN THE PARK (3.04 A.31)**

This item is not applicable to the work outlined in The Confluence Construction Phase Plan.



# EXHIBIT A: PROJECT DESIGN MATERIALS



Waterloo Greenway

The Confluence, stretching from Lady Bird Lake to 4th St along Waller Creek, will provide a myriad of unique park spaces and new connectivity, including iconic lattice bridges, elevated walks, gardens, natural education spaces, terraces, trails, and ecological enhancements. Exhibit A includes renderings of the Design Materials Associated with the Confluence Construction Phase Plan. This Phase Plan realizes the drawings and specifications for Waterloo Greenway Phase II: The Confluence.

## The Confluence [formerly Creek Delta]

\*Project Area Diagram, Limit of Work (LOW.) located in Exhibit B



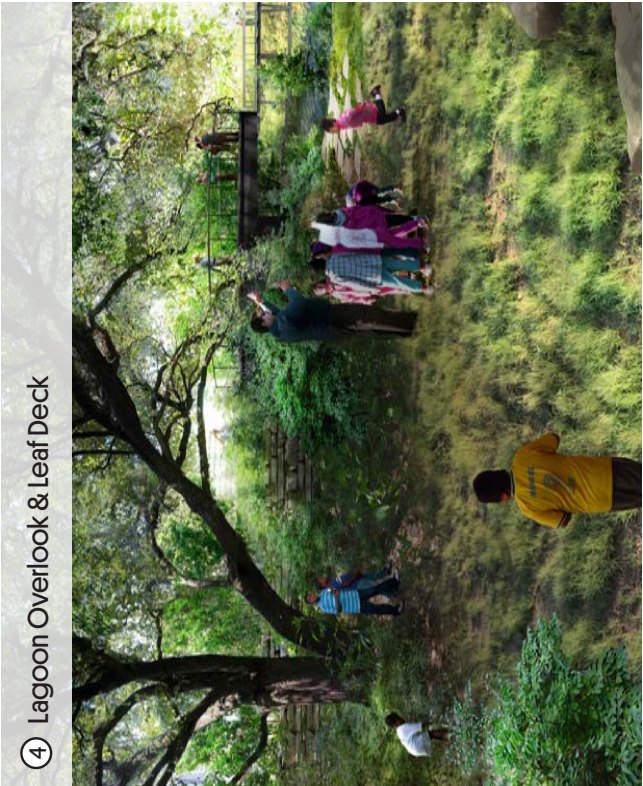


EXHIBIT A: PROJECT DESIGN MATERIALS





EXHIBIT A: PROJECT DESIGN MATERIALS



Key





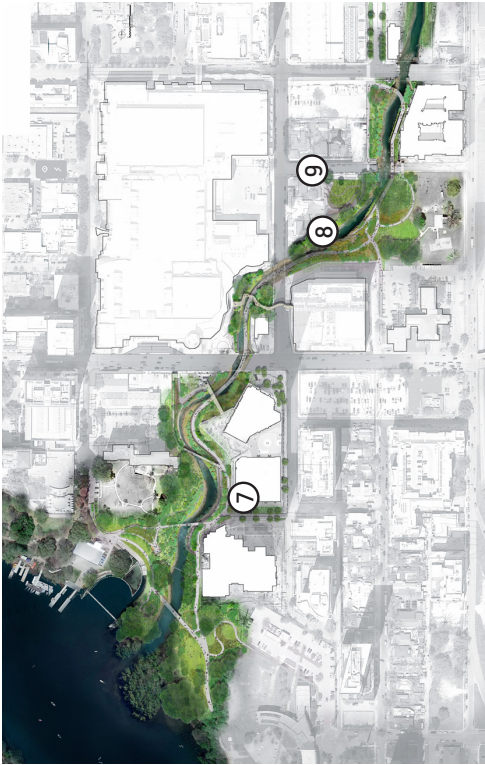
EXHIBIT A: PROJECT DESIGN MATERIALS



⑨ Biofiltration Pond



Key





# EXHIBIT B: PROJECT AREA DIAGRAM

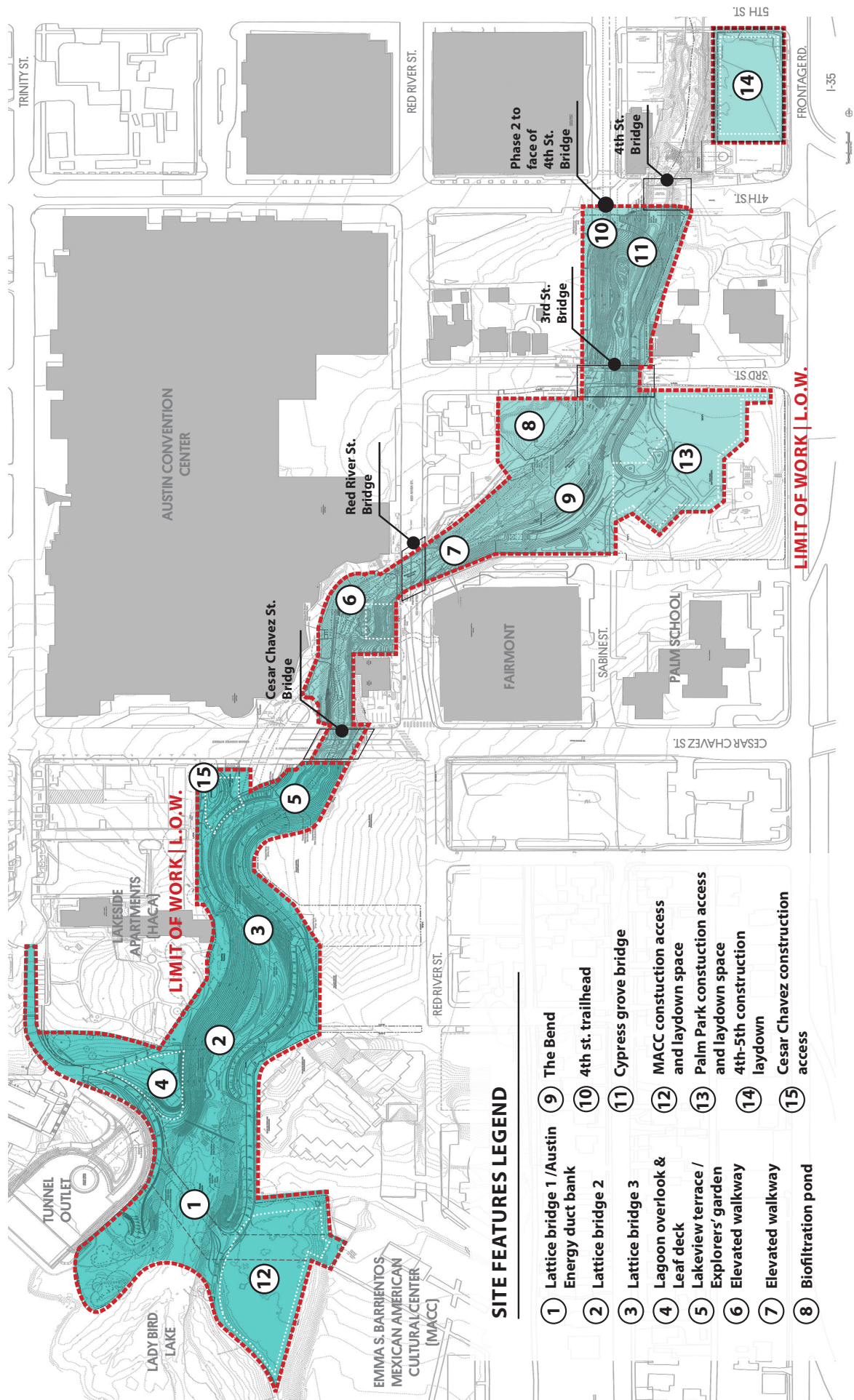


EXHIBIT C: PROJECT SCHEDULE

- 1

January LGC Meeting [1/18/23]
- 2

Notice to Proceed/Start Construction\* [2/27/23]
- 3

Substantial Completion [8/27/2025]
- 4

Final Completion/Construction Complete [11/27/2025]
- 5

Post-Construction [11/27/2026]
- \*Notice to Proceed date will be coordinated with the Contractor after contract execution and is subject to change.

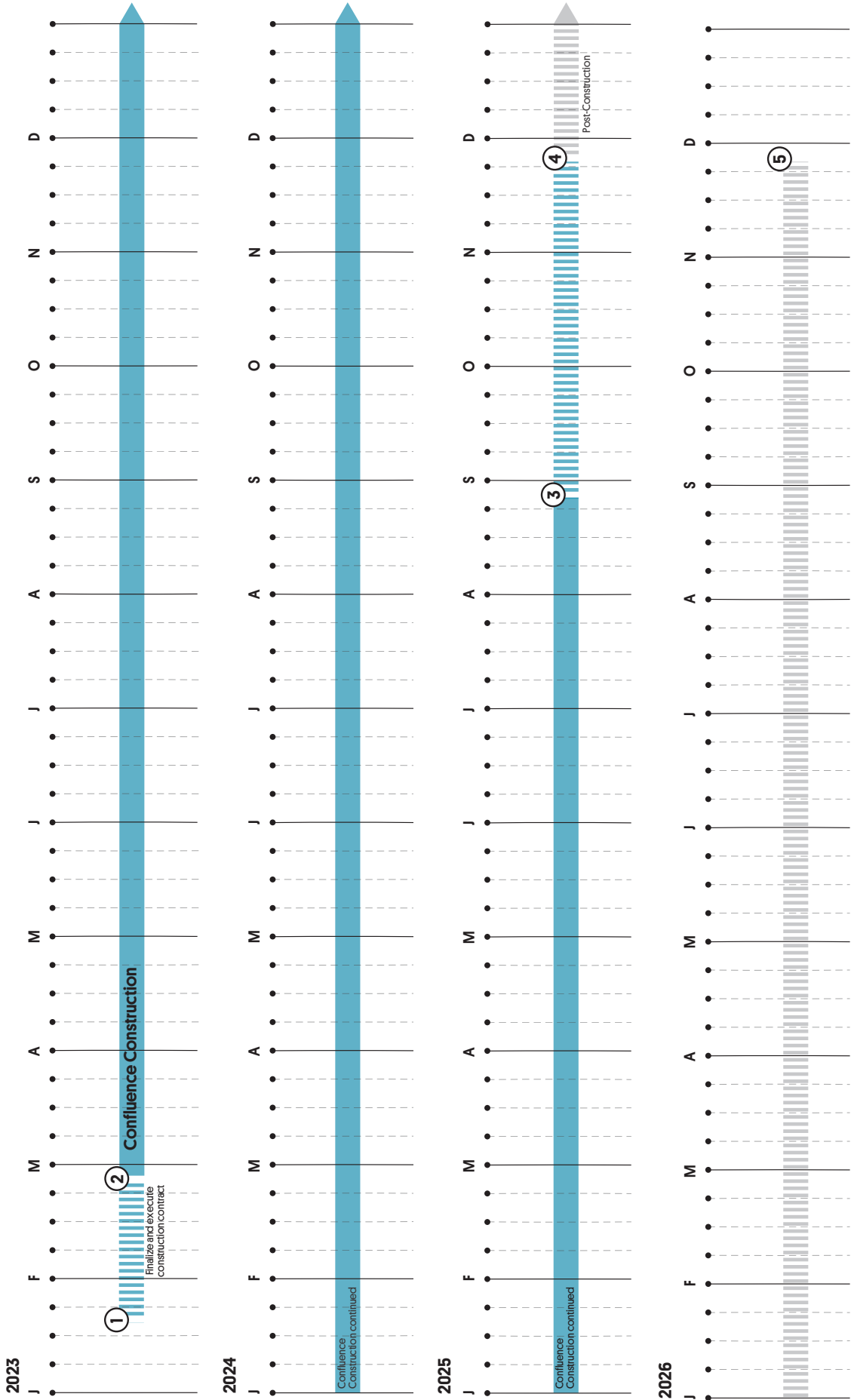
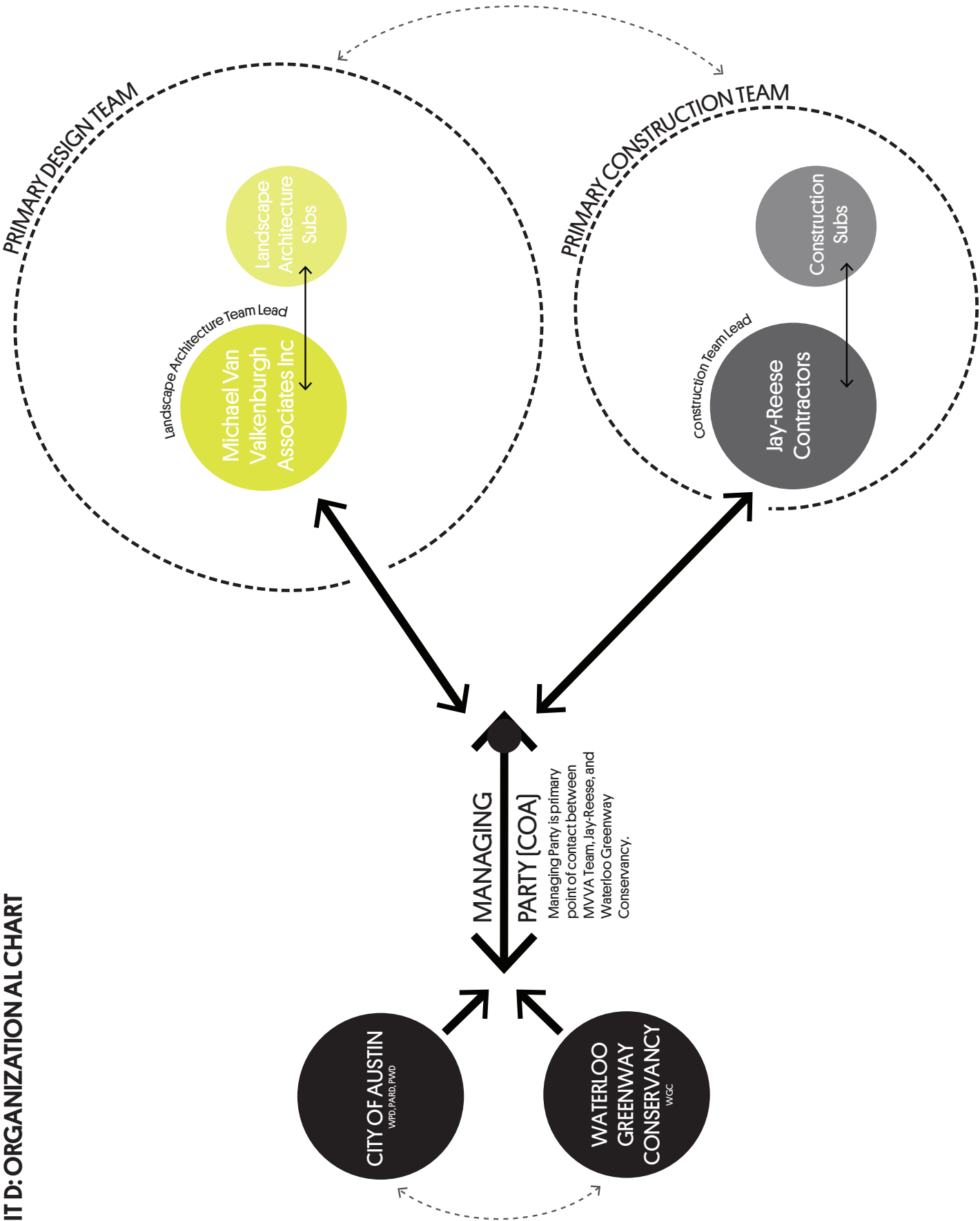


EXHIBIT D: ORGANIZATIONAL CHART



Title: The Confluence (formerly Creek Delta) Construction Phase Plan ("Construction Phase Plan", "Phase Plan", or "Project")

Location: Along Waller Creek from Lady Bird Lake to 4th Street  
(see Exhibit B, Project Area Diagram)

### THE CONFLUENCE CONSTRUCTION

The Construction Phase Plan encompasses the construction phase of the creek and trail improvements along Waller Creek from Lady Bird Lake to 4<sup>th</sup> Street as shown in **Exhibit B, Project Area Diagram**. The Jay-Reese Contractors, Inc. (Jay-Reese) construction team will coordinate with the design team, led by Michael Van Valkenburgh Associates (MVVA). This coordination will ensure that the project improvements meet the design standards set forth by the design team.

### CONSTRUCTION ADMINISTRATION (MVVA + ATLAS)

The Confluence construction period will last 45 months total (33 months construction and 12 months post-construction). The construction phase will require ongoing coordination with the owner team (City and WG), landscape architecture design team lead (MVVA), materials testing consultant (Atlas), and construction contractor (Jay-Reese) and associated subcontractors. Within the City, WPD and PARD will act as sponsors and PWD will provide project management and construction inspection services. This process assures the best quality control of the design team to be efficient and responsible. During the construction of The Confluence and post-construction phase, the MVVA team will provide construction administrative services including but not limited to:

- Participating in weekly coordination meetings led by Jay-Reese and the City Public Works Department Project Manager (PWD PM)
- Reviewing and responding to RFI's associated with the Project
- Reviewing and responding to shop drawings from contractors
- Performing site visits and review during critical construction milestones, including but not limited to mock-ups, material quality control and acquisition, testing, education meetings, and any other critical items outlined in the Specifications
- Develop and report Landscape Architecture Supplemental Instructions (LASI)
- Reviewing change order or substitution requests
- SITES design credit completion and construction credit completion
- Coordinating Site Development and Building Permit corrections as they arise. Note that major design changes or unforeseen existing condition conflicts may require a Site Development Permit Revision which is not included in this Phase Plan.
- Conducting off-site vendor visits
- Project Closeout:
  - Reviewing all payment applications submitted by the contractor and evaluating the level of completion for each item

- Performing a punch list review prior to issuing letter of substantial completion
- Submit as-built drawing set from Construction Manager (DPR)
- Participate in O&M warranty reviews
- Participate in the final inspections

During construction, Atlas will provide construction materials testing and special inspection services required to meet the Specifications during construction. The Atlas scope proposal included in the Supplemental Information section of this Phase Plan is an estimate of expected testing and could vary based on materials encountered. Atlas services will include but are not limited to:

- Issue daily reports for each site visit
- Conduct materials testing services conducted in accordance with industry standards and Specifications
- Complete sitework laboratory testing on backfill to ensure proper compaction.
- Perform asphalt paving field density testing of the base course.
- Conduct Concrete Paving and Miscellaneous Concrete Testing
- Conduct Special Inspection Services, which will be performed by a subconsultant as necessary. Includes structural steel assemblies, drilled piers, soil nails and MSE wall installation

#### CONSTRUCTION EXECUTION PLAN

Construction execution will be completed from February 2023-November 2025 (33 months), as depicted in **Exhibit C, Project Schedule**. Construction execution will utilize the construction management expertise of Jay-Reese, the firm selected as the construction contractor for this Project. Work will begin on the north side of the Project (4<sup>th</sup> Street) south to Lady Bird Lake. The work will be completed with support from the MVVA-led design team.

Jay-Reese will be awarded the construction contract after approval of this Phase Plan. At that time, Jay-Reese will provide a baseline schedule and work plan that provides more details to the general construction summary that follows:

1. **Site Access:** Jay-Reese will access the construction site by five main entrance points illustrated in **Exhibit B, Project Area Diagram**. The main access points are at Palm Park, Red River Street on the east creek bank, E. Cesar Chavez at the west bank, Trinity Street near the Tunnel Outlet, and the Emma S. Barrientos Mexican-American Cultural Center (MACC) parking lot.
2. **Procurement & Technology Coordination:** Procurement of materials including buyout, shop drawing review and approvals, and product mock-ups will occur early in the schedule to secure premium cost and quality products. Coordination and alignment between the design team and construction team will occur shortly after the Notice to Proceed (NTP) for the Jay-Reese construction contract. This includes digital modeling, development of a coordination model, coordination drawings, and drawing reviews and approvals.
3. **Overall Site Preparation:** Prior to issuance of the NTP for construction, the City will implement an outreach effort for the encampments within the portion of the Project limits of construction that Jay-Reese plans to secure first. Once the area is vacated, WPD will remove existing debris in and around the creek. After the clean-up is complete, the NTP will be issued, and overall site preparation will begin. The overall site preparation elements include:

- a. Mobilization
  - b. Dewatering and Diversion Controls
  - c. Site Clearing & Earthwork
  - d. Site Utilities
4. **Creek and Trail Improvements:** Jay-Reese will begin on the creek restoration improvements, biofiltration pond, and trail and bridge work after overall site preparation. Jay-Reese will provide further details on construction sequencing and phasing.
5. **Inspections & Project Close-out:** At substantial completion, **(Exhibit C, Project Schedule)** a site and building (for structural walls) will be developed and any corrections will be made by Jay-Reese. Final inspections will occur with key stakeholders before Project close-out.

#### **PROJECT MANAGEMENT & MEETINGS**

Jay-Reese will provide lead construction management and be the primary point of contact for the construction team. This will include coordination among subcontractors via weekly team meeting and with the City and WGC. In addition, Jay-Reese will conduct the specified pre-construction conference with the Project stakeholders as a milestone alignment meeting. Additional milestone alignment meetings will be conducted as needed.

The City and WGC may participate in weekly on-site meetings.



# Waller Creek Local Government Corporation Meeting January 18, 2023

## Request for Action

**Posting Language:**

Authorize award and execution of a construction contract for the Waller Creek Delta project (now known as “The Confluence”) with Jay-Reese Contractors, Inc. in the amount of \$64,423,483 plus a \$11,284,270 contingency, for a total contract amount not to exceed \$75,707,753. (District 9)

[Note: This contract will be awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) through the achievement of Good Faith Efforts with 4.5% MBE and 2.94% WBE participation.]

**Lead Department:**

Financial Services Department

**Managing Departments:**

Watershed Protection Department  
Parks and Recreation Department  
Public Works Department

**Amount and Source of Funding/Fiscal Note:**

Funding in the amount of \$58,779,068 is available in the Fiscal Year 2022-2023 Capital Budget of the Watershed Protection Department.

Funding in the amount of \$14,798,666 is available in the Fiscal Year 2022-2023 Capital Budget of the Parks and Recreation Department.

Funding in the amount of \$1,330,018 is available in the Fiscal Year 2022-2023 Capital Budget of Austin Energy.

Funding in the amount of \$500,000 is available in the Fiscal Year 2022-2023 Capital Budget of the Convention Center.

Funding in the amount of \$300,000 is available in the Fiscal Year 2022-2023 Capital Budget of Austin Water.

**Purchasing Language:**

Lowest responsive bid of two bids received through a competitive Invitation for Bid solicitation.

**Prior City Council Action:**

October 18, 2012 – Council approved Resolution No. 20121018-068 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. 20130620-21 authorizing negotiation and execution of a joint development agreement and related documents between Waller Creek Conservancy, the City and the Waller Creek Local Government Corporation concerning the revitalization of the Waller Creek District.

June 20, 2013 – Council approved Resolution No. 20130620-23, 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.

August 27, 2020 - Council passed Resolution No. 20200827-077 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) consistent with the Council-approved Design Plan for the District.

**Prior Waller Creek Local Government Corporation Action:**

June 16, 2019 – Waller Creek Local Government Corporation (LGC) approved the Creek Delta Construction Documents, Permitting, and Bidding Phase Plan (CD and Bidding Phase Plan).

November 4, 2019 – LGC approved Addendum One to the Creek Delta CD and Bidding Phase Plan for Austin Energy duct bank improvements.

May 13, 2020 – LGC approved Addendum Two to the Creek Delta CD and Bidding Phase Plan for updates to the budget contribution split and schedule.

December 18, 2020 – LGC approved Addendum Three to the Creek Delta CD and Bidding Phase Plan for additional authority and a modified bidding process.

December 8, 2021 – LGC approved Addendum Four to the Creek Delta CD and Bidding Phase Plan for additional authority.

April 13, 2022 – LGC approved Addendum Five to the Creek Delta CD and Bidding Phase Plan for the Texas Department of Transportation/Austin Transportation Department sponsored grading study on 4<sup>th</sup> Street.

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

February 8, 2022 – Planning Commission granted conditional approval of a park on a lot greater than one acre and zoned “P”.

**For More Information:**

Direct inquiries to Garrett Cox, 512-974-9423, or the Project Manager, Diana Wang, 512-974-7168.

**Additional Backup Information:**

**BRIEF HISTORY OF PROJECT**

The Waller Creek Delta project is part of the Waterloo Greenway. This Council-approved Design Plan within the Waller Creek District will create creek, trail and water quality improvements between Lady Bird Lake and 4<sup>th</sup> Street along Waller Creek. This project is identified as a part of the Waller Creek District in Council Resolution 20110428-014, which emphasized the need to redevelop the area in conjunction with the completion of the Waller Creek Tunnel project and as a critical phase of what is now known as Waterloo Greenway. This portion of Waller Creek has historically been neglected which has resulted in severe environmental, water quality, and public safety issues due to flooding and erosion.

A portion of the project is funded by the 2012 General Obligation Bonds.

**PURPOSE, DETAILS, BENEFIT OF REQUESTED ACTION**

This project will restore the creek health and functionality, improve park use and downtown connectivity, implement innovative water quality controls, and support economic redevelopment in the area. The work includes creek channel reconstruction to stabilize severely eroded slopes and installation of unique ecologic features, plantings, and trails. Trails will be located on both sides of Waller Creek and will each be approximately one mile in length. Four new pedestrian bridges and eleven trail connections to the existing right-of-way are proposed. Green Business Certification Inc. (GBCI) Sustainable SITES Initiative (SITES) sustainability measures to achieve a minimum silver certification are required.

This item includes four allowances. The allowance of \$500,000 will be used to address the Butler Trail Pedestrian

Reroute. The allowance of \$20,000 will be used to address contaminated soil and water. The allowance of \$68,000 will be used to address any need for controlled low strength material (CLSM). The allowance of \$82,500 will be used to address any need for dry rock rip rap. An allowance is an amount that is specified and included in the construction contract or specifications for certain items of work whose details are not yet determined at the time of bidding.

This contract will include award of alternate bid items for Alternate A - Lattice Bridge No. 3 abutments and Alternate B - Lattice Bridge No. 3 bridge. An alternate bid is a specified item of the construction work that is priced separately and may be awarded as part of the contract if the bids come within the specified budget.

Due to the potential for unknown conditions a 17.1% contingency in funding has been included to allow for the expeditious processing of any change orders. A contingency is an additional amount of money added to the construction budget to cover any unforeseen construction costs associated with the project. Authorizing this contract and its additional contingency funding authorizes change orders within the contingency amount.

The project includes time sensitive improvements. Portions of the trail in this area are unusable and currently fenced off from public use. A delay in authorization of the construction contract will affect the ability to perform these improvements during the planned construction timeline for the Waller Creek District/Waterloo Greenway program, which is a major City initiative and stimulus to our local economy.

The contract allows 1,003 calendar days for completion of this project. This project is located within zip code 78701 (District 9).

Jay-Reese Contractors, Inc. is located in Dripping Springs, Texas.

**Strategic Outcome(s):**

Safety

Culture and Lifelong Learning

Health and Environment

Mobility

THE CONFLUENCE CONSTRUCTION PHASE PLAN	
	Fee
<b>1. Construction Administration</b>	
Professional Service Fees (MVVA Team)	\$ 5,909,244
Reimbursable Expenses (MVVA Team)	\$ 328,010
Project Management Service Fees (COA PWD)	\$ 643,500
Construction Inspection Service Fees (COA PWD)	\$ 828,120
<b>Construction Administration Total</b>	<b>\$ 7,708,874</b>
<b>2. Testing</b>	
Materials Testing (Atlas Team)	\$ 348,347
<b>Testing Total</b>	<b>\$ 348,347</b>
<b>3. Construction (Jay-Reese)</b>	
Cost of Work (Base Bid + Alternates A and B)	\$ 63,752,983
Construction Allowances	\$ 670,500
<b>Construction Total</b>	<b>\$ 64,423,483</b>
<b>4. Owner Allowances, Contingencies, and Cost Overrun</b>	
Unknown Conditions Allowance	\$ 2,500,000
AE Chilled Water Allowance	\$ 500,000
Telecommunications Relocation Allowance	\$ 300,000
Structural Assessment Allowance	\$ 60,000
Tree Care Survey Allowance	\$ 15,000
<b>Allowances Total</b>	<b>\$ 3,375,000</b>
<b>Change Order Contingency (9%)</b>	<b>\$ 5,976,565</b>
<b>Cost Overrun Reserve (3%)</b>	<b>\$ 1,932,704</b>
<b>SUMMARY</b>	
<b>1. Construction Administration</b>	<b>\$ 7,708,874</b>
<b>2. Testing</b>	<b>\$ 348,347</b>
<b>3. Construction</b>	<b>\$ 64,423,483</b>
<b>4. Owner Allowances, Contingencies, and Cost Overrun</b>	<b>\$ 11,284,270</b>
<b>TOTAL:</b>	<b>\$ 83,764,974</b>

# EXHIBIT H: CAPITAL NEEDS PROJECTION

## THE CONFLUENCE CONSTRUCTION PHASE PLAN

Total Fees*					
\$77,788,408					
Months	Activity	Fees	Months	Activity	Fees
1	Construction - North of Cesar Chavez St. (CC)	\$100,000	26	Construction - South of CC	\$2,500,000
2	Construction - North of CC	\$500,000	27	Construction - South of CC	\$2,500,000
3	Construction - North of CC	\$724,885	28	Construction - South of CC	\$2,000,000
4	Construction - North of CC	\$724,885	29	Construction - South of CC	\$2,000,000
5	Construction - North of CC	\$2,000,000	30	Construction - South of CC	\$2,000,000
6	Construction - North of CC	\$2,000,000	31	Construction - South of CC	\$2,000,000
7	Construction - North of CC	\$2,000,000	32	Construction - South of CC	\$2,000,000
8	Construction - North of CC	\$2,000,000	33	Construction - South of CC	\$2,000,000
9	Construction - North of CC	\$2,000,000	34	Post-Construction Phase	\$2,000,000
10	Construction - North of CC	\$2,000,000	35	Post-Construction Phase	\$2,000,000
11	Construction - North of CC	\$2,000,000	36	Post-Construction Phase	\$2,000,000
12	Construction - North of CC	\$2,000,000	37	Post-Construction Phase	\$1,738,638
13	Construction - North of CC	\$2,000,000	38	Post-Construction Phase	\$100,000
14	Construction - North of CC	\$2,000,000	39	Post-Construction Phase	\$100,000
15	Construction - South of CC	\$2,000,000	40	Post-Construction Phase	\$100,000
16	Construction - South of CC	\$2,000,000	41	Post-Construction Phase	\$100,000
17	Construction - South of CC	\$2,000,000	42	Post-Construction Phase	\$100,000
18	Construction - South of CC	\$2,000,000	43	Post-Construction Phase	\$100,000
19	Construction - South of CC	\$2,000,000	44	Post-Construction Phase	\$100,000
20	Construction - South of CC	\$2,000,000	45	Post-Construction Phase	\$100,000
21	Construction - South of CC	\$2,000,000	46	Post-Construction Phase	\$100,000
22	Construction - South of CC	\$4,000,000	47	Post-Construction Phase	\$100,000
23	Construction - South of CC	\$3,000,000	48	Post-Construction Phase	\$3,500,000
24	Construction - South of CC	\$3,000,000			
25	Construction - South of CC	\$2,500,000			
TOTAL					\$77,788,408

\*Excludes Owner Allowances and Cost Overrun Reserve.

Projections will fluctuate in response to adjustments in work flow. Due to anticipated lag in receipt and approval of invoices, payments will be issued after the performance period ends.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**City of Austin**  
FOR  
DESIGN AND CONSTRUCTION ASSISTANCE  
FOR THE  
**Waterloo Greenway**

THIS AGREEMENT is entered into this 30th day of September, **2022**, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for **Fort Worth District** (hereinafter the “District Commander”) and the **City of Austin** (hereinafter the “Non-Federal Sponsor”), represented by its **Assistant City Manager**.

WITNESSETH, THAT:

WHEREAS, the Government is authorized to provide design and construction assistance for publicly owned, non-Federal water-related environmental infrastructure and resource protection and development projects in Texas, including projects for water supply, storage, treatment, and related facilities; water quality protection, wastewater treatment, and related facilities; and surface water resource protection and development pursuant to Section 5138 of the Water Resources Development Act of 2007, Public Law 110-114 (hereinafter “Section 5138”);

WHEREAS, Section 5138(e) provides that the Federal share of project costs under each agreement entered into under Section 5138 shall be 75 percent, which may be in the form of reimbursements;

WHEREAS, as of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is \$9,025,000; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means: providing construction assistance for a water-related environmental infrastructure and resource protection and development project in Austin, Texas on Waller Creek to include water quality protection, environmental restoration, and surface water resource protection, and development along Creek Delta (Confluence) from Cesar Chavez and Third Street running parallel with Red River St. downtown Austin, Texas, as generally described in the Letter Report for Design and Construction of the Waterloo Greenway (Creek Delta)

Confluence Phase of the Environmental Infrastructure Project, located in Austin, Texas, dated August 10, 2022, and approved by the District Commander for, Fort Worth District on August 11, 2022.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “project costs” means all costs incurred by the Government and the Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Non-Federal Sponsor’s eligible pre-Agreement design work costs, if any; the Government’s costs for conducting environmental compliance activities, providing management oversight and technical assistance, as needed, preparing monthly financial reports, reviewing design work, appraisals, and invoices provided by the Non-Federal Sponsor, conducting periodic inspections during construction, and any other costs incurred by the Government pursuant to the provisions of this Agreement; the Non-Federal Sponsor’s eligible costs for engineering, design, construction, and supervision and administration; the Non-Federal Sponsor’s eligible costs for providing real property interests and relocations, and performing permit work; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; audits; betterments; or the Non-Federal Sponsor’s cost to negotiate this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “pre-Agreement design work” means the design work performed by the Non-Federal Sponsor prior to the effective date of this Agreement that the Government determines was accomplished in a satisfactory manner and is necessary for the Project.

G. The term “betterment” means a difference in the design or construction of an element of the Project that results from applying standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. As of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is limited to \$9,025,000. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

B. The Non-Federal Sponsor shall design and construct the Project in accordance with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto and the following:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of the Project. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing inspections pursuant to Article II.D.

2. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all design work, including relevant plans and specifications, and related contract solicitations, prior to the Non-Federal Sponsor's issuance of such solicitations. In addition, until the Government has provided written confirmation that environmental compliance has been completed, the Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the Project or commence construction of the Project using its own forces.

3. The Non-Federal Sponsor is responsible for obtaining all permits and licenses necessary for design, construction, and operation and maintenance of the Project and for ensuring compliance with all requirements of such permits and licenses.

4. The Non-Federal Sponsor shall establish and maintain such legal and institutional structures as necessary to ensure the effective long-term operation of the Project at no cost to the Government.

5. Upon completion of design, the Non-Federal Sponsor shall furnish the Government with copies of the completed design.

6. The Non-Federal Sponsor shall operate and maintain the Project at no cost to the Government. The Non-Federal Sponsor shall furnish the Government with a copy of the as-built drawings for the completed work.

7. No more frequently than every 30 calendar days, the Non-Federal Sponsor shall provide the Government an invoice with the documentation required by Article V for the



Government to determine whether costs incurred by the Non-Federal Sponsor are eligible for inclusion in project costs. If the Non-Federal Sponsor incurred costs for pre-Agreement design work, documentation of such costs shall be included in the Non-Federal Sponsor's initial invoice. Following completion of the Project, the Non-Federal Sponsor shall notify the Government, which shall conduct a final inspection of the Project. No later than 60 calendar days after the Government conducts the final inspection, the Non-Federal Sponsor shall provide its final invoice, unless an extension is requested by the Non-Federal Sponsor in writing and approved by the Government.

C. Using information developed and provided by the Non-Federal Sponsor, the Government shall ensure environmental compliance activities necessary to achieve compliance with all applicable environmental laws and regulations for design and construction of the Project are completed prior to initiation of construction. The Government will notify the Non-Federal Sponsor in writing when such compliance has been completed.

D. The Government may perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis during design and construction of the Project. Further, the Government shall perform a final inspection to verify satisfactory completion of the Project.

E. Subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall be responsible for 75 percent of project costs, with reimbursement for costs incurred by the Non-Federal Sponsor determined in accordance with this paragraph. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, that are eligible for inclusion in project costs. To the maximum extent practicable, within 30 calendar days of receipt of each invoice, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for 75 percent of the Non-Federal Sponsor's eligible costs included in each invoice, less 25 percent of the costs incurred by the Government during that same invoice period. The Government shall provide a written explanation to the Non-Federal Sponsor for costs it determines are not eligible for inclusion in project costs.

F. The Government shall ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101-307108), prior to initiation of construction. All costs incurred by the Government and the Non-Federal Sponsor for actions associated with historic preservation, including the identification and treatment of historic properties as those properties are defined in the NHPA and the mitigation of adverse effects other than data recovery, as the Government determines necessary and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of such costs, shall be included in project costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for the Project may be applied toward data recovery of historic properties and such



costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. If the Non-Federal Sponsor elects to include betterments in the design or construction of the Project, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits for such work, without reimbursement by the Government.

### ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government and the Non-Federal Sponsor shall jointly determine the real property interests required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps as appropriate, of such real property interests. Upon written confirmation by the Government, the Non-Federal Sponsor shall, in accordance with Article IV.A., investigate to ensure that HTRW does not exist in, on, or under the real property interests to be acquired. The Non-Federal Sponsor shall acquire such real property interests and notify the Government in writing when such interests have been acquired. The Non-Federal Sponsor shall ensure that such real property interests are retained in public ownership.

B. The Government and the Non-Federal Sponsor shall jointly determine the relocations required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, as appropriate, for such relocations. Upon written confirmation by the Government, the Non-Federal Sponsor shall perform or ensure performance of such relocations and notify the Government in writing when such relocations have been accomplished.

C. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

#### ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor shall provide written notice to the Government within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.E.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

## ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in project costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

### 1. Real Property Interests.

a. General Procedure. The Government shall include in project costs the value of required real property interests acquired from private owners after the effective date of this Agreement except that the value of real property interests donated to the Non-Federal Sponsor are not eligible for inclusion in project costs. The Non-Federal Sponsor shall obtain for each required real property interest acquired from private owners an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor concludes the acquisition of the interest. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for valuation purposes.

(3) The Government shall include in the project costs the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings, the Non-Federal Sponsor shall notify the Government in writing of

its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for valuation purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2), the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in project costs eligible incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs after the effective date of this Agreement in acquiring required real property interests from private owners. Such incidental costs include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of required real property interests.

e. Except for permit work pursuant to Article V.A.4., any publicly owned real property interests required for the Project will be provided by the Non-Federal Sponsor at no cost to the Government.

2. Relocations. The Government shall include in project costs eligible costs of required relocations performed by the Non-Federal Sponsor after the effective date of this Agreement.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally



equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Texas would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Design and Construction Work. The Government shall include in project costs eligible costs of the design and construction work performed by the Non-Federal Sponsor after the effective date of this Agreement and eligible costs of pre-Agreement design work, if any.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Agreement design work is expressed as fixed costs plus a percentage of project costs, the Non-Federal Sponsor shall calculate such costs based on actual costs.

b. The following costs are not eligible for inclusion in project costs: interest charges, or any adjustment to reflect changes in price levels after completion of the design or construction work; pre-Agreement design work previously reimbursed under another agreement; costs that exceed the Government's estimate of the cost for such design and construction work; design or construction work obtained at no cost to the Non-Federal Sponsor; or any construction work initiated prior to completion of environmental compliance.

4. Permit Work. The Government shall include in project costs eligible costs of permit work performed by the Non-Federal Sponsor after the effective date of this Agreement. Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design and construction of the Project, including the permits necessary for construction, operation, and maintenance of the Project on publicly owned or controlled real property interests. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for design and construction of the Project in project costs.



5. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). The Non-Federal Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of the Project in project costs.

B. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for any costs incurred by the Non-Federal Sponsor prior to the effective date of this Agreement, excluding costs for pre-Agreement design work.

## ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, project costs are projected to be \$12,033,333, with the amount of Federal funds available for such work limited to \$9,025,000. Costs incurred by the Government are projected to be \$9,025,000. Costs incurred by the Non-Federal Sponsor are projected to be \$3,008,333 which includes eligible design and construction work after the effective date of this Agreement projected to be \$3,008,333, eligible pre-Agreement design work projected to be \$0, eligible real property interests projected to be \$0, eligible relocations projected to be \$0, and eligible permit work projected to be \$0. Reimbursements pursuant to Article II.E. for eligible costs incurred by the Non-Federal Sponsor are projected to be \$9,025,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly financial reports setting forth the estimated project costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; and the balance of the Federal funds available for the Project.

C. After the Non-Federal Sponsor has provided its final invoice to the Government, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. As a part of the final accounting, the Government will determine the total reimbursable amount by taking 75 percent of eligible costs incurred by the Non-Federal Sponsor, less 25 percent of the costs incurred by the Government for the Project. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursement by delivering a check payable to "FAO, USAED, **Fort Worth (M2)** to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final

accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, then subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

## ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate this Agreement. If the Government determines that the Federal funds available for the Project will be exhausted prior to completion of the Project, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of the Project, at no cost to the Government, and with no further participation in the Project by the Government.

## ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from any and all damages arising from design, construction, or operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in project costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other

evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

#### ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

**Assistant City Manager,  
City of Austin  
301 West 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
Austin, Texas 78701**

If to the Government:

**District Commander  
U.S. Army Corps of Engineers, Fort Worth District  
810 Taylor St  
Fort Worth, Texas 76102**

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

#### ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.


#### ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES


Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF AUSTIN

BY:   
\_\_\_\_\_  
**Jonathan S. Stover P.E., PMP**  
**Colonel, U.S. Army**  
**Commanding**

BY:   
\_\_\_\_\_  
**Rey Arellano**  
**Assistant City Manager,**  
**City of Austin**

30 SEP 2022

DATE: \_\_\_\_\_

DATE: 09/29/2022 \_\_\_\_\_

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, ED VAN EENOO, do hereby certify that I am the Chief Financial Officer of the City of Austin (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Waterloo Greenway Creek Delta Confluence Phase; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Partnership Agreement.

IN WITNESS WHEREOF, I have made and executed this certification this 25 day of AUGUST, 2022.

BY: Ed Van Eeno

TITLE: CHIEF FINANCIAL OFFICER

DATE: 8/25/2022

Encl (2)



## CERTIFICATE OF AUTHORITY

I, **Deborah Thomas**, do hereby certify that I am the principal legal officer for the **City of Austin**, that the **City of Austin** is a legally constituted public body with full authority and legal capability to perform the terms of the **Project Partnership Agreement (PPA)** between the Department of the Army and the **City of Austin** in connection with the **Waterloo Greenway Creek Delta Confluence**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this **PPA**, and that the person who executed this **PPA** on behalf of the **City of Austin** acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
8th day of August 2022.



**Deborah Thomas**  
**Acting City Attorney**

## CERTIFICATION OF LEGAL REVIEW

The Waterloo Greenway Creek Delta Confluence Project Partnership Agreement has been fully reviewed by the Fort Worth District Office of Counsel and has been determined to contain no substantive deviations from the applicable model agreement and is therefore legally sufficient.

GILLIAM.DEREK.MICH  
AEL.1607946481

Digitally signed by  
GILLIAM.DEREK.MICHAEL.1607946481  
Date: 2022.08.18 15:59:39 -05'00'

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Derek M. Gilliam  
Assistant District Counsel  
Office of Counsel

Encl (4)

## CERTIFICATION REGARDING LOBBYING

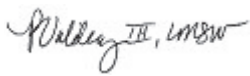
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Peter Valdez, signed on behalf of Rey Arellano, Assistant City Manager  
Court Administrator  
City of Austin, Downtown Austin Community Court

DATE: August 25, 2022

Encl (5)

**EXHIBIT J: FUNDING AGREEMENTS****MEMORANDUM OF UNDERSTANDING**

The purpose of this Memorandum of Understanding (MOU) is to formally acknowledge the funding plan, both the funding sources and timing to receive funds, that the Parks and Recreation Department (PARD), Watershed Protection Department (Watershed) and Waterloo Greenway Conservancy (Conservancy, formerly known as Waller Creek Conservancy) have agreed on to design and construct the Waterloo Greenway Confluence Project (Confluence, formerly known as Creek Delta and Creek Mouth), filed under City of Austin records as the Waller Creek District – Creek Delta (CIP Project No. 12861.002). In addition, the MOU serves as a historic account of the budget progression and related funding plan changes as project costs changed over time.

**SECTION 1: BACKGROUND**

The City of Austin (City), in partnership with the Conservancy, is developing the Waterloo Greenway (Greenway, formerly known as Waller Creek and the Chain of Parks) in downtown Austin. The Greenway is a 35-acres, open space in downtown Austin, and features a restored Waller Creek, trail systems and destination park spaces, including a revitalized Palm Park and Waterloo Park. Below is a list of key City Council actions to support the vision to date:

**A. Past Council Actions**

- 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 (MVVA)/Thomas Phifer & Partners (TPP) 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 (JDA) 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 (Design Plan) as developed by MVVA/TPP.
- May 24, 2018: Council authorized an Amendment No. 2 to the Waller Creek TIRZ No. 17 Project and Financing Plan (Project Plan) to add \$110,000,000 in tax incremental financing

(TIF) to support surface improvements in the District. The updated Design Plan was also approved as part of this action.

- Council approval of Project Partnership Agreement (PPA) and related budget amendment between the City of Austin and U.S. Army Corps of Engineers (Corps) for \$9,025,000 in federal funding through the Corps' Environmental Infrastructure Program.

### **B. Design Plan and Implementation Strategy**

Per the [Project Plan](#), the implementation strategy bundles areas of the Design Plan - Waterloo Park, Confluence and Palm Park, Connectivity, the Refuge and the Pontoon Bridge - into distinctive, capital program areas to deliver the vision for the Greenway. This strategy will ensure effective and efficient delivery of the full capital program. See Exhibit 1 for a graphic of the Design Plan, including the capital program areas.

### **C. The Confluence Project | Scope of Work**

The Confluence is a specific project within the Confluence and Palm Park capital program area to stabilize the streambank, restore the creek and riparian ecology, build an elevated walkway and trail system, create park spaces, and build water quality features. Once completed, the Confluence will connect public spaces along Lady Bird Lake to destinations such as Palm Park, the Emma S. Barrientos Mexican American Cultural Center, Brush Square, and the Austin Convention Center, as well as to transportation stations and networks such as the Downtown MetroRail Station, the Lance Armstrong Bikeway, and future Project Connect rail stations. See Exhibit 2 for a graphic of the Confluence.

## **SECTION 2: THE CONFLUENCE PROJECT BUDGET PROGRESSION**

In May 2018, a Confluence budget of \$38,200,000 was approved by Council as part of the Project Plan. In November 2018, a cost estimate was prepared by the Construction-Manager-at-Risk (CMAR), SpawGlass, based on the Confluence 100% Design Development (DD) plan set and 2018 market prices. At that time, the total project cost was estimated at \$68,100,000, including soft costs and contingencies. Over the next five months, the team undertook a reconciliation and value engineering (VE) scope of work to find savings within the project using various measures including scope reduction, detail alterations, and material selection in order to reduce the overall cost of the project while maintaining the ambitions of the approved Design Plan, including escalation. These efforts resulted in over \$12,000,000 in initial cost savings, reducing the overall project cost. However, these savings were offset by other increases in project cost leading to an overall increase of \$17,700,000. The increase in project costs were informally supported by the City and Conservancy, establishing a new project budget of \$55,868,969 in April 2019, as shown in budget progression table below.

As work advanced, the project encountered a series of challenges in 2020, including additional value engineering exercises, resignation of the CMAR, change of the project delivery method from CMAR to a Competitive Sealed Proposal (CSP), and the onset of the global COVID-19 pandemic, which further impacted the budget and influenced the decision to shift management of the construction contract from the Conservancy to the City of Austin. In addition, the project budget was modified to include new scope required to (1) achieve program goals for operations and maintenance access and trail connectivity and (2) support public infrastructure needs located within Confluence's limits of work, requested and funded by other City departments or programs within WPD, including Austin



Energy (AE) duct banks, Austin Water (AW) utilities, and the Austin Convention Center (ACC) water quality pond improvements. In consideration of these changes, the budget increased by an additional ~\$5,000,000. This change is shown in Confluence budget progression table as the difference between the April 2019 and March 2021 budgets, increases the project budget to \$60,873,767.

In 2021, the design continued to develop through the 100% Construction Documents (CD), completed in December of 2021. Concurrently, a cost estimate was prepared by Vermeulens Cost Consulting, the professional construction cost estimator for the project, of the 100% CD plan set. This updated estimate took into account changes related to redevelopment of adjacent properties, code compliance, and increased escalation and labor costs. Additionally, the update responded to the requirement to change to a low-bid (IFB) bidding process due to concerns about the legality of the CSP process under State law. The IFB approach required cost and contingency updates in order to complete the construction documentation. This update increased the cost estimate by ~\$19,100,000, for a new, project budget of \$80,000,000. The project budget was informally supported by the City and Conservancy in February 2022.

**TABLE 2.1: The Confluence Budget Progression**

<b>Date</b>	<b>Total Construction</b>	<b>Soft Cost + Contingency</b>	<b>TOTAL PROJECT BUDGET</b>
<b>May 2018 (Project Plan)</b>			<b>\$ 38,200,000</b>
April 2019 (100% DD, Post-VE)	\$40,350,259	\$15,518,710	\$ 55,868,969
March 2021 (65% CD, Additional Scope)	\$42,500,000	\$18,373,767	\$ 60,873,767
February 2022 (100% CD)	\$56,052,113	\$23,947,887	\$80,000,000

### **SECTION 3: THE CONFLUENCE FUNDING PLAN**

#### **A. Funding Overview**

Recognizing the significant increase to the project budget between May 2018 and February 2022, the City and Conservancy have worked collaboratively to develop a funding plan considering both public and private funding sources, at different project milestones. The Confluence Funding Plan Progression is further detailed in the table below.

**TABLE 3.1. The Confluence Funding Plan Progression**

The Confluence Project Phase (DATE)	Total Budget	WGC	Developer Fee/Fiscal*	PARD	WPD	Other COA Departments **	Certificates of Obligations backed by TIF	Federal Grants
Project Plan (May 2018)	\$38,200,000	\$4,380,858	\$1,619,142	\$0	\$19,500,000	\$0	\$12,700,000	
100% DD, Post-VE (April 2019)	\$55,868,969	\$8,549,827	\$1,619,142	\$1,100,000	\$26,400,000	\$0	\$18,200,000	
65% CD, Add. Scope (March 2021)	\$60,873,767	\$512,106	\$1,540,462	\$1,473,914	\$30,367,284	\$1,670,000	\$25,310,000	
100% CD, Add. Scope (February 2022)***	\$80,000,000	\$13,000,000	\$1,540,462	\$2,248,345	\$30,380,175	\$2,290,000	\$25,310,000	\$9,025,000

\* Fairmont Canopy Walk Developer Agreement only. This developer contribution is counted towards WGC total funds raised, as outlined in 2018 TIRZ plan.

\*\*Roll up of funds planned from AE, AW, and ACC.

\*\*\*Roll up of February 2022 funding plan is greater than the \$80,000,000 budget. See Table 3.2 for further detail.

Currently, the project budget at 100% CD is \$80,000,000 with a funding plan that includes both public and private funding sources. The funding plan also outlines a cash-flow strategy that enables \$13,000,000 in private funds to be committed to the project. This strategy allows the project to move forward immediately, as these funds come in over the next 5-6 years. Table 3.2 highlights the funding sources by project partner.

**Table 3.2: February 2022 Budget Breakdown Including Funding Source(s)**

Funding Plan by Project Partner/Funding Source	Sum of Total Current Funding Sources
Developer Fee/Fiscal*	\$ 1,540,462
PARD (2012 Bond, Parkland Dedication)	\$ 2,248,345
Certificates of Obligations backed by the TIF	\$ 25,310,000
WG (Private Donations)	\$ 13,000,000
WPD (DUF, CO, USCF)	\$ 30,380,175
Other City Departments (AE, AW, ACC annual budget appropriations)	\$ 2,290,000
U.S Army Corps. Of Engineers (Environmental Infrastructure Federal Grant)	\$ 9,025,000
<b>Grand Total</b>	<b>\$ 83,768,982</b>

\*Fairmont Canopy Walk Developer Agreement only.

As noted, the total current funding plan is \$3,768,982 greater than the current budget. These funds are being held as additional contingency, as outlined in Article 5. The additional contingency will be held or released, as agreed upon by the parties, after review of the construction cost estimates provided as part of the bid phase.

## **B. Public Funding Sources**

The public funding sources are a combination of local and federal funds, including sponsoring City departments, fees and fiscal paid by developers to the City as part of the permit process, TIF, and federal funding. Further details are shown below.

### **1. City Funding Sources**

The City intends to contribute funds consistent with available funding sources of the respective sponsoring department(s). City sponsor departments including PARD, WPD, AE, AW, and ACC will collectively be responsible for contributing \$34,918,520. PARD is responsible for \$2,248,345, funding sources include Parkland Dedication Fees and 2012 Bond Funding. WPD is responsible for \$30,380,175, funding sources include Drainage Utility Fund (DUF), Certificates of Obligation (CO) backed by the DUF, and Urban Structural Control Fund (USCF). Other City departments, including AW and AE, intend to contribute \$2,290,000 towards infrastructure improvements that were requested within the project limits. The budget is made whole by contributing \$25,310,000 in TIF funds approved by the TIF Board and City Council in May 2018 as part of the Project Plan, further details shown in Section 3.B.2.

In addition, the City will contribute \$1,540,462 via fees and fiscal payments made by developers to the City. These public funds consist of Riparian Mitigation Zone Funds (RMZF) and Parkland Mitigation payments made to the City via an Encroachment, License, and Development Agreement (Doc. No. 2016046539) with Manchester Austin LLC, the developer of the Fairmont Hotel. The Agreement is specifically for building the Canopy Walk, an aerial pedestrian connection from the Fairmont to the Austin Convention Center spanning over Red River Street and Waller Creek. The City and Conservancy agree that these funds would be counted toward the Conservancy's overall funding contribution as outlined in the 2018 TIF Project Plan. As a result, these funds are being tracked as a separate category to ensure they are appropriately accounted for within the larger Program budget.

### **2. Reallocation of 2018 Project Plan TIF Funds**

The Project Plan budget included \$12.7M for the Confluence. In order to meet the current budget, the distribution of TIF funds within the District must be adjusted, increasing the TIF allocation for the Confluence to \$25.31M. The funding plan assumes redistributing \$7,110,000 from the Pontoon Bridge, reducing the TIF commitment for Pontoon Bridge from \$8,000,000 to \$890,000, redistributing \$2,000,000 from 4<sup>th</sup> – 5<sup>th</sup> Street, reducing the TIF commitment for 4<sup>th</sup> – 5<sup>th</sup> Street from \$3,000,000 to \$1,000,000, and redistributing \$3,500,000 from real estate needs, reducing the TIF commitment from \$6,000,000 to \$2,500,000.

Reallocation of existing TIF funds from Real Estate and 4<sup>th</sup> – 5<sup>th</sup> Street to the Confluence does not change the distribution of funds in the Project Plan. Reallocation of TIF funds from the Pontoon Bridge to Confluence is a change in the distribution of funds in the Project Plan, requiring administrative approval by the respective sponsoring department.

### **3. U.S. Army Corps of Engineers Federal Funds**

In February 2022, the U.S Army Corps of Engineers (Corps) committed to a \$2,500,000 federal grant via the Environmental Infrastructure Program, as noted in the Corps' [FY22 Construction Spend Plan](#). The federal commitment increased by \$6,525,000 via an addendum to the FY22 Construction Work

Plan, released in March 2022. The total federal commitment is \$9,025,000. The City, Conservancy and our federal partners at the Corps are actively working on a Project Partnership Agreement (PPA) between the Corps and City to memorialize this new partnership and funding commitment for the Confluence. The PPA must be signed prior the execution of the Confluence construction contract.

### C. Private Funding Sources

For private funds, as noted in Table 3.2, the funding plan shows the Conservancy is responsible for \$13,000,000. This plan includes: \$512,106 from past design funding and a \$1,000,000 commitment to fund Lattice Bridge #3.

The Conservancy has launched the Phase 2 capital campaign in order to raise the remaining funds for the Confluence. This campaign represents the next phase as the Conservancy works towards the Project Plan fundraising commitment of ~\$100,000,000. The Conservancy plans to pursue private donations and grants as a part of an overall \$13,000,000 commitment to Phase 2. The Conservancy anticipates the following schedule for funds raised through pledges for each year:

**Table 3.3: Fundraising Schedule**

Fundraising Schedule	
Year	Funds Raised
Pre-2022	\$ 512,106
2022	\$ 5,000,000
2023	\$ 5,000,000
2024	\$ 2,487,894
<b>Total</b>	<b>\$ 13,000,000</b>

The Conservancy will not have all of the funding listed in the Table 3.3 schedule available at the date it is raised. Pledges are multi-year commitments and there is always risk associated with receipt of funds on the agreed-upon schedule. Accounting for these factors, the following table (3.4) outlines the anticipated availability of funds in each of the following 7 years.

**Table 3.4: Availability of Private Funds**

Schedule for Receipt of Funds	
Year (FY, Fiscal Year)	Funds Received (\$)
Contributed to Date	\$ 512,106
2023	\$ 1,561,871
2024	\$ 2,000,000
2025	\$ 2,000,000
2026	\$ 3,000,000
2027	\$ 2,000,000
2028	\$ 1,500,000
2029	\$ 938,129
<b>Total</b>	<b>\$ 13,000,000</b>

## SECTION 4: COMMITMENTS OF PARTIES

Each party agrees to the following commitments to ensure the agreed upon funding plan moves forward as proposed and in time for construction contract execution.

### **A. City Commitments (subject to Council approval):**

1. Include \$13,000,000 funded by certificates of obligation with a reimbursement resolution in FY 22-2023 proposed budget. The Budget and Performance Division within the City's Financial Services Department will lead this effort. A reimbursement resolution is a separate, but related item to the budget. A reimbursement resolution is required by federal and state law whenever a bond issuer plans to use bond proceeds to retroactively reimburse itself for expenditures already incurred. The use of reimbursement resolution is approved in the City's financial policies and allows the City to start projects to be funded with bonds in advance of the City's next scheduled general obligation bond sale. The intent is to provide the necessary budget authorization to allow the project to move forward while simultaneously pursuing donations.
2. Pursue financial reimbursement through the anticipated donations from the Conservancy. Certificates of obligation will not be issued until efforts to recover through donations are exhausted. The certificates of obligation are a type of general obligation bond and are backed by the full faith and credit of the COA. Should the City have to issue certificates of obligation to fund any gap in the anticipated donations from the Waterloo Greenway Conservancy, the debt service would impact the debt-portion of the tax rate. A principal amount of \$13,000,000 issued paid back over 20 years is estimated to total \$21,752,975.
3. Serve as the Managing Party during construction, working with the Conservancy to ensure successful completion of the project.
4. Allocate a total of \$25,310,000 in TIF funds to the Confluence Project. Further details noted below:
  - a. Allocate \$12,700,000 in existing appropriations for the Confluence.
  - b. Reallocate funds from real estate acquisitions in the Confluence link to capital improvements for the Confluence project, totaling \$3,500,000.
  - c. Reallocate \$2,000,000 of funding currently dedicated to the 4<sup>th</sup>-5<sup>th</sup> Street Connection to the Confluence Project with an agreement that a financial strategy will be developed that identifies how the 4<sup>th</sup> to 5<sup>th</sup> Street Connection will be funded prior to the Confluence Project going into construction.
  - d. Reallocate \$7,110,000 of funding currently dedicated to the Pontoon Bridge to the Confluence Project with an agreement that a financial strategy will be developed that identifies how the Pontoon Bridge will be funded prior to the Confluence Project going into construction.
5. Use existing and planned appropriations within the City's budget to fund the Confluence Project. Sources include the following:
  - a. WPD to commit \$30,380,175 from appropriated and reallocated funds within the Waller Creek District capital budget. Sources include the DUF, CO, and USCF.



- b. PARD to commit \$2,248,345 from appropriated and reallocated funds for the Waller Creek District. Sources include 2012 Bond funds and Parkland Dedication funds.
  - c. Other departments including AW, AE, and ACC commit to a total amount of \$2,290,00 for sponsor-related improvements within the Confluence Project.
  - d. Other funds include fees and fiscal payments to the City via the permit process for a total of \$1,540,462 via Parkland Mitigation funds and Riparian Mitigation Zone funds.
  - e. Private funds from the Conservancy in the amount of \$13,000,000 supported by reimbursement resolution of certificates of obligation, pending Council approval.
  - f. Federal funds in the amount of \$9,025,000, pending execution of the PPA between the City and Corps.
- 6. Establish accounting protocols, in partnership with the Conservancy, for the City acting as the Managing Party, including:
  - a. Schedule for annual budget allocations to update project with the Conservancy annual fundraising
  - b. Process for the Conservancy payment to the City including schedule, documentation, reporting, and any other requirements necessary for reporting to donors.
- 7. Finalize the Global Cost Update in partnership with the Conservancy. This study will holistically review the Design Plan and budget based on current market conditions and construction rates. The process will create an updated budget, phasing strategy and provide budgetary structure for project delivery decisions.
- 8. Work collaboratively with the Conservancy on a strategy for pursuing Federal and State funds for the Waterloo Greenway project. This will include establishing overall funding targets, protocols for pursuing the funds, and a strategy for recognizing both parties' contributions towards successful receipt of funds.
- 9. Work in partnership with the Conservancy to facilitate naming opportunities in the Confluence, consistent with Article 12 of the JDA, recognizing that it is critical to WGC fundraising commitments.

**B. Conservancy Commitments:**

- 1. Provide the City with description of the type of infrastructure to be funded in order for the reimbursement resolution to be aligned with the most appropriate infrastructure type and noted in the City's financial system accordingly.
- 2. Continue working with the City to ensure successful completion of the project.
- 3. Commit to a \$13,000,000 capital campaign towards funding the Confluence project scope as outlined in this budget. This includes funds raised-to-date as well as our future commitments.
  - a. The Conservancy will specifically commit to the schedule of fundraising outlined in the previous section of this document. This includes \$1,561,871 in cash available for allocation to the project before construction begins, the past contributions of \$512,106, and the remaining contribution (\$10,926,023) to be reimbursed to the City during and after construction of the Confluence.
- 4. Work with the City to establish protocols for annual reimbursements to the City, including communication of required reporting for private funds.

5. Finalize the Global Cost Update in partnership with the City. This study will holistically review the Waller Creek District design plan and budget based on current market conditions and construction rates. The process will create an updated budget, phasing strategy and provide budgetary structure for project delivery decisions.
6. Work collaboratively with the City on a strategy for pursuing Federal and State funds for the Waterloo Greenway project. This will include establishing overall funding targets, protocols for pursuing the funds, and a strategy for recognizing both parties' contributions towards successful receipt of funds.

## **SECTION 5: BUDGET OVERAGE PLAN**

The funding strategy and responsibilities are based on the current budget, which was established utilizing the 100% CD documents cost estimates, noted in February 2022 in the relevant tables. Although the budget includes contingencies, there are still risks to the project budget that will only be known once the project bids are submitted and reviewed. The 100% CD cost estimate reflects the impacts of additional scope and construction document details as well as the best knowledge of our professional cost estimator on the current market conditions. Therefore, it is possible that the contractor bids could result in an increase to the overall project budget.

In the event that the budget increases, the City and the Conservancy will evaluate the updated estimate and decide whether to proceed with construction or not. If the budget is within 5% of the \$80,000,000, 100% CD cost estimate, the project will advance to construction with the following expectations about addressing the cost overage:

### **The City agrees to:**

1. Allocate additional TIF funds, up to \$3,768,982, as noted in Table 3.2, will be included in the project budget.

Alternatively, the owner team will need to consider that if the contractor bids exceed the current \$80M budget by more than 5%, the City and Conservancy may need to temporarily put the project on hold to conduct value engineering. Since several value engineering exercises have already been conducted to date, another cost reduction effort will likely require considerable descoping, which would involve eliminating design elements on the project.

**SECTION 6: POINTS OF CONTACT**

For purposes of this MOU, the point of contact for each party is as follows:

**Parks and Recreation Department:**

Lana Denkeler, Acting Project Manager  
Parks and Recreation Department  
919 West 28<sup>th</sup> 1/2 Street  
Austin, Texas 78705  
(512) 974-9414

**Watershed Protection Department:**

Kristin Pipkin, Project Management Supervisor  
Watershed Protection Department  
505 Barton Springs Road  
Austin, Texas 78704  
(512) 974-3315

**Waterloo Greenway Conservancy:**

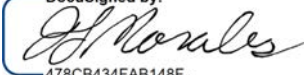
John Rigdon, Director of Planning and Design  
1111 Red River Street  
Austin, Texas 78701  
(512) 541-3520 ext. 112

**ACCEPTED BY CITY OF AUSTIN****Parks and Recreation Department:**

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By:  \_\_\_\_\_  
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Kimberly McNeeley, Director

Date: 6/30/2022 \_\_\_\_\_

**Watershed Protection Department:**

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By:  \_\_\_\_\_  
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Jorge L. Morales, P.E., CFM, Director

Date: 7/1/2022 \_\_\_\_\_

**Office of Financial Services:**

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By:  \_\_\_\_\_  
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Kimberly Olivares, Deputy Chief Financial Officer

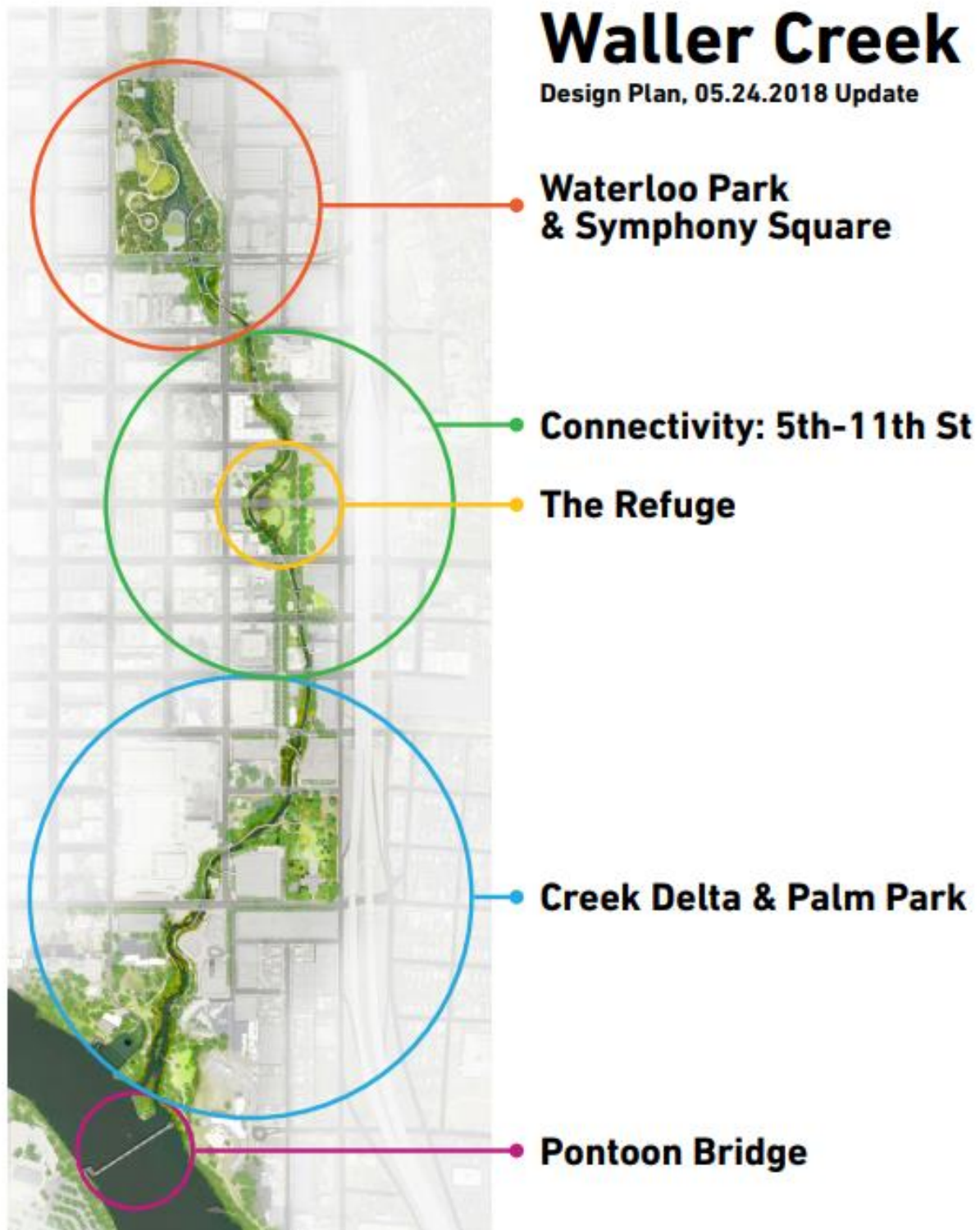
Date: 6/29/2022 \_\_\_\_\_

**ACCEPTED BY WATERLOO GREENWAY CONSERVANCY**

DocuSigned by:  
By:  \_\_\_\_\_  
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Jesús Aguirre, Chief Executive Officer

Date: 6/29/2022 \_\_\_\_\_

## EXHIBIT 1. WATERLOO GREENWAY DESIGN PLAN





## EXHIBIT 2. CONFLUENCE DESIGN CONCEPT





### EXHIBIT 3. AMENDMENT NO. 2 TO THE TIRZ NO. 17 PROJECT AND FINANCING PLAN – PROGRAM BUDGET

	Total	WCC/Developers	State	CoA	TIRZ
City Staff Resources	\$ 2,500,000	\$ -	\$ -	\$ -	\$ 2,500,000
Waterloo Park Link	\$ 135,950,000	\$ 92,200,000	\$ 850,000	\$ 15,600,000	\$ 27,300,000
Creek Delta Link	\$ 108,700,000	\$ 50,500,000	\$ -	\$ 21,500,000	\$ 36,700,000
Connectivity: 5th-11th Streets	\$ 50,000,000	\$ 20,500,000	\$ -	\$ 4,000,000	\$ 25,500,000
Pontoon Bridge	\$ 31,750,000	\$ 23,750,000	\$ -	\$ -	\$ 8,000,000
Refuge	\$ 56,750,000	\$ 46,750,000	\$ -	\$ -	\$ 10,000,000
Endowment	\$ 5,000,000	\$ 5,000,000	\$ -	\$ -	\$ -
	Total	WCC/Developers	State	CoA	TIF
Total Capital Cost	\$ 245,650,000	\$ 93,700,000	\$ 850,000	\$ 41,100,000	\$ 110,000,000
Total O&M Cost	\$ 109,250,000	\$ 109,250,000	\$ -	\$ -	\$ -
<b>TOTAL PROJECT COST</b>	<b>\$ 354,900,000</b>	<b>\$ 202,950,000</b>	<b>\$ 850,000</b>	<b>\$ 41,100,000</b>	<b>\$ 110,000,000</b>



## MEMORANDUM OF UNDERSTANDING

### WALLER CREEK DISTRICT | CREEK DELTA PROJECT

#### PROPOSED FUNDING COMMITMENT FOR LATTICE BRIDGE 3 BETWEEN THE PARKLAND DEDICATION PROGRAM AND THE WATERLOO GREENWAY CONFLUENCE PROJECT

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Parks and Recreation Department (PARD) and Waterloo Greenway Conservancy (WGC) recognize the need for and benefit of Lattice Bridge 3 to the Waterloo Greenway Confluence (formerly Creek Delta) project. Lattice Bridge 3 provides an important connection from Cesar Chavez Street into the Waterloo Greenway system and to the Roy and Ann Butler Hike and Bike Trail further south. The bridge will also serve as a route for duct banks providing critical telecom infrastructure across the creek. Recognizing the funding gap within the Confluence project for Lattice Bridge 3, PARD and WGC agree to commit parkland dedication fees and private donations as outlined in this document to fully fund the three million dollar Lattice Bridge 3.

PARD commits \$1,014,103.00 from parkland dedication funds, in accordance with the spending criteria governing the funds, to be dedicated toward the construction of the bridge. PARD will also commit the \$429,365.00 parkland dedication fees from the Waller Park Place development (SP-2013-0449C(R1)) directly adjacent to the Creek Delta project.

WGC commits one million dollars, funded by private donations, toward the construction of the bridge. WGC will also commit the \$561,870.88 private donation from the Waller Park Place development directly adjacent to the Waterloo Greenway Confluence project. WGC has executed a standard donation agreement with the developer to receive and commit the funds (see attached exhibit).

PARD and WGC are committing these funds in good faith that the bridge will be built as part of the Confluence project. The funding will be tracked and used only for the purpose of constructing the bridge. Lattice Bridge 3 is shown on the site development permit (SP-2019-0400D) and in the bid documents as the first add-alternate for the project. Instructions to bidders for the project will require that Lattice Bridge 3 be treated as part of the primary bid. Should unforeseen circumstances prevent the construction of the bridge by June 30, 2026, the parkland dedication funds will no longer be committed to Lattice Bridge 3. The parkland dedication funds defined in this letter may be reallocated to portions of the Waterloo Greenway Confluence project that serve a park purpose up to the amount of \$1.1 million dollars per a commitment made in the Funding MOU executed 7/1/2022 (see attached exhibit). Any parkland dedication funds in excess of \$1.1 million dollars will revert back to the general PLD account and no longer be assigned to the Waterloo Greenway Confluence project.

**POINTS OF CONTACT**

For purposes of this MOU, the point of contact for each party is as follows:

**Parkland Dedication Program:**

Randy Scott, Program Manager

Parks and Recreation Department

919 West 28<sup>th</sup> 1/2 Street

Austin, Texas, 78705

(512) 974-9484

**Waller Creek District Program:**

Lana Denkeler, Project Manager

Parks and Recreation Department

919 West 28<sup>th</sup> 1/2 Street

Austin, Texas, 78705

(512) 974-9414

**ACCEPTED BY CITY OF AUSTIN**


Parks and Recreation Department

By:  \_\_\_\_\_  
DocuSigned by:  
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Liana Kallivoka, Assistant Director

Date: 12/26/2022

**ACCEPTED BY WATERLOO GREENWAY CONSERVANCY**

By:  \_\_\_\_\_  
DocuSigned by:  
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Jesús Aguirre, Chief Executive Officer

Date: 12/20/2022

## DEVELOPER CONTRIBUTION AGREEMENT WALLER CREEK DELTA PROJECT LATTICE BRIDGE

This **Developer Contribution Agreement** (this “**Agreement**”) is made by and between Waterloo Greenway Conservancy, a Texas non-profit corporation (“**WGC**”) and Waller Creek Owner LLC, a Delaware limited liability company (the “**Developer**”), hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, WGC is a non-profit corporation working in collaboration with the City of Austin (the “**City**”) on the redevelopment of parkland and other public space along Waller Creek, in Austin, Travis County, Texas (the “**Waller Creek Project**”);

WHEREAS, in connection with the Waller Creek Project, the City has filed Site Plan No. SP-2019-0400D (the “**City’s Site Plan**”) to allow for creek restoration, construction of a pathway, and pedestrian bridges within Waller Creek from Lady Bird Lake to 4<sup>th</sup> Street (the “**City Project**”);

WHEREAS, the Developer owns a tract of land known as Lots 1 – 3, Block A, Waller Park Place, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Document No. 201500087 of the Official Public Records of Travis County, Texas (the “**Property**”);

WHEREAS, the Developer plans to construct a mixed use project and related appurtenances on the Property (the “**Developer Project**”);

WHEREAS, the City Project will include construction of the lattice bridge generally depicted on **Exhibit A** attached hereto, which lattice bridge shall include fifteen (15) four inch (4”) conduits for public utility lines to serve the Developer Project and surrounding properties, including, without limitation, fiber optic and telecommunication lines (collectively, the “**Lattice Bridge**”);

WHEREAS, Developer has agreed to contribute to the costs of the Lattice Bridge as more particularly set forth herein.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, WGC and the Developer agree as follows:

### I. LATTICE BRIDGE

1. WGC will cause the Lattice Bridge to be constructed in accordance with the City’s Site Plan and this Agreement. Upon completion of the Lattice Bridge, WGC will promptly notify the Developer.

### II. DEVELOPER CONTRIBUTIONS

1. The Developer will contribute a total of One Million Dollars (\$1,000,000.00) toward the construction cost of the Lattice Bridge (the “**Developer Contributions**”) as follows:

- i. The Developer has paid (or will pay within thirty (30) days after written request by the City) the City's Parks and Recreation Department ("PARD") a non-refundable parkland dedication fee in the amount set forth on **Exhibit B** (the "Parkland Dedication Fee"); and
- ii. The Developer will donate to WGC an amount equal to the Developer's Contributions less the Parkland Dedication Fee (the "**Construction Contribution**") within thirty (30) days after written request by WGC. The Construction Contribution may only be used by WGC to pay construction costs and construction administration costs of the Lattice Bridge

2. Notwithstanding the foregoing or anything else herein to the contrary, in the event that construction of the Lattice Bridge is not substantially completed on or prior to June 30, 2026, WGC will refund the entire Construction Contribution to Developer within thirty (30) days after written request by Developer.

### III. GENERAL PROVISIONS

1. **Interpretation of this Agreement.** This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for nor against either Party.

2. **Notice and Addresses.** Any Notice in this Agreement provided or permitted to be given, made or accepted by either Party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the Party to be notified at the last address for which that the sender has at the time of mailing, with return receipt requested, or (b) by delivering the same to such Party. Notice deposited in the mail in the manner described above shall be effective two (2) days after such deposit. For the purposes of Notice, the addresses of WGC and Developer for receipt of any notice in this Agreement are:

**DEVELOPER:** Waller Creek Owner LLC  
Attn: John Walter  
2000 McKinney Avenue, Suite 1000  
Dallas, Texas 75201-2027

**WGC:** Waterloo Greenway Conservancy  
Attn: Chris Perkes  
111 Red River St.  
Austin, Texas 78701

With a copy to: Waterloo Greenway Conservancy  
Attn: Chief Executive Officer  
1111 Red River St.  
Austin, Texas 78701



3. **Notice of Default; Opportunity to Cure; Remedies.** If any Party alleges that the other has defaulted in the performance of any obligation under this Agreement, the alleging Party will provide written Notice to the other Party specifying the nature of the alleged default and provide the other Party a reasonable opportunity of at least fifteen (15) calendar days to cure the default before exercising any remedy related to the alleged default. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond any applicable grace or notice and opportunity to cure period, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.

4. **Amendment.** This Agreement may be modified only by a writing properly executed by each of the Parties. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the Parties unless made in writing and properly executed by each of the Parties.

5. **No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement will be construed to confer upon any person other than the Parties any rights, benefits or remedies under or because of this Agreement.

6. **Assignment.** A Party to this Agreement may not assign or transfer its interests under this Agreement without written approval of the other Party.

7. **No Joint Venture, Developer, Agency.** This Agreement will not be construed in any form or manner to establish a joint venture or agency, express or implied, or any employer-employee or borrowed servant relationship by and among the Parties.

8. **Severability.** If any term or provision of this Agreement is void or unenforceable as determined by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

9. **Applicable Law; Venue.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles, which would apply the law of any other jurisdiction.

10. **Counterparts.** The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

11. **No Waiver.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver.

THIS AGREEMENT is duly executed by the Parties to this Agreement on the respective dates following each Party's signature and is effective on the Effective Date.

**WGC:**

**WATERLOO GREENWAY CONSERVANCY,**  
a Texas non-profit corporation

By: [Signature]  
Name: JESUS ABURDE  
Title: CEO  
Date: 7/25/22

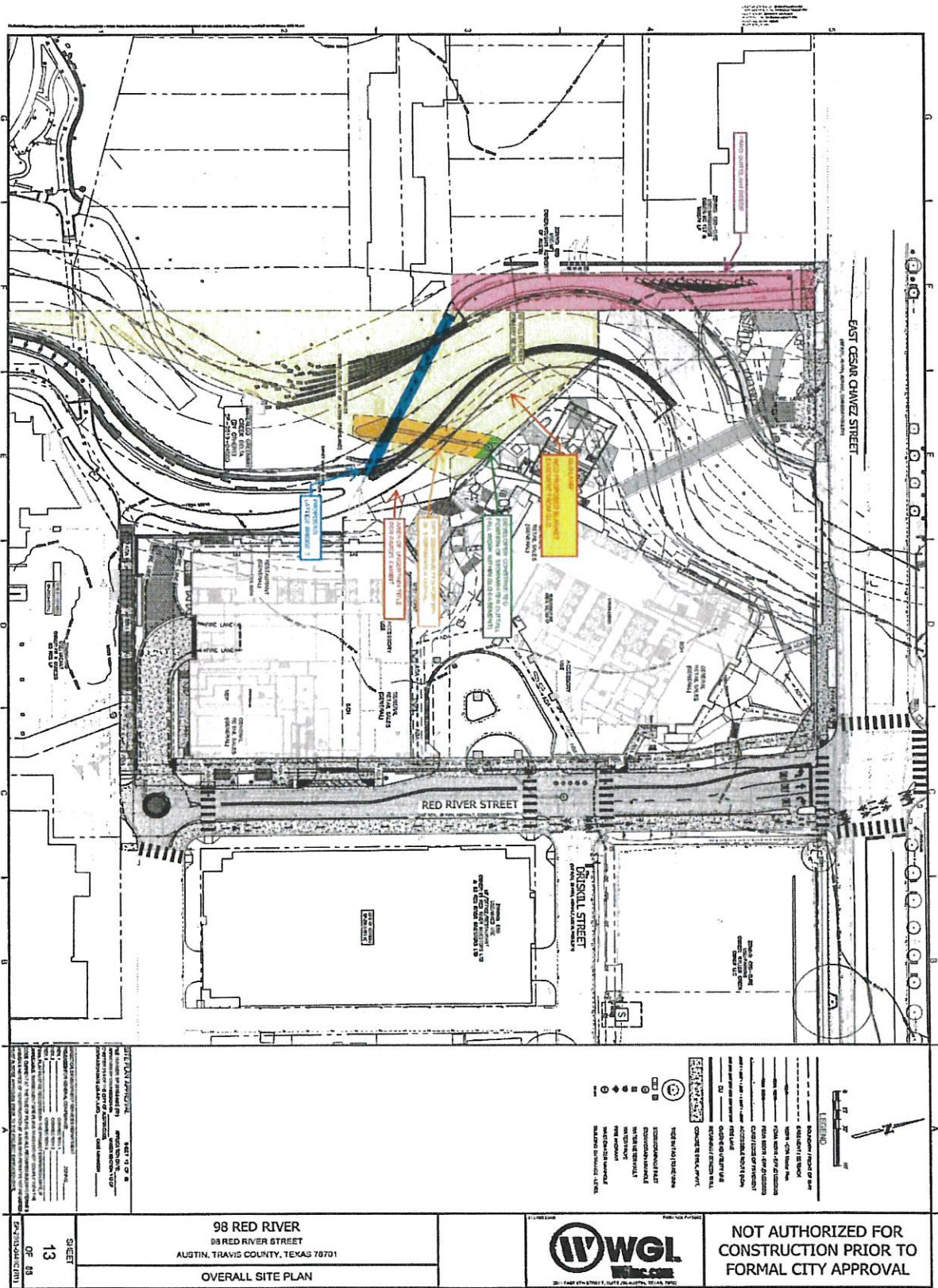
**DEVELOPER:**

**WALLER CREEK OWNER LLC,**  
a Delaware limited liability company

By: Waller Creek JV LLC,  
a Delaware limited liability company,  
its sole member

By: [Signature]  
Name: Tony Corp  
Title: Authorized Signatory  
Date: 7-13-22

EXHIBIT A  
DEPICTION OF LATTICE BRIDGE



**EXHIBIT B**  
**PARKLAND DEDICATION FEE**



**City Of Austin**  
**P.O. Box 1088, Austin, Texas 78767**  
**INVOICE**

**Invoice No.:** 7568993**Invoice Date:** 03/03/2022**Description:** Site Plan**Sub Description:** Site Plan  
Administrative**Work Description:** Consolidated**Payer Information****Company/Facility Name:** WGI**Invoice To:** Sydney Weaver  
2021 East 5th Street, Suite 200  
Austin TX 78702**Phone No.:** (512)669-3560**Invoice Amount:** \$99,999.00**Additional Information****Department Name:** Development Services Department**Invoice Issued By:** Adrian Moreno**Invoice Details**

	Internal Ref. No.	Address	Comments	Amount
FAO Description Fee in Lieu of Land (Parks)	12587164	98 RED RIVER ST	1 of 4 ABS portal payment	\$99,999.00
FAO Codes	8721-8607-0640-4148			
<b>TOTAL INVOICED:</b>				<b>\$99,999.00</b>
<b>TOTAL PAID:</b>				<b>\$99,999.00</b>

The invoiced fees are valid through September 30, 2022, and may require update thereafter.





**City Of Austin**  
**P.O. Box 1088, Austin, Texas 78767**  
**INVOICE**

**Invoice No.:** 7568994**Description:** Site Plan**Sub Description:** Site Plan  
Administrative**Invoice Date:** 03/03/2022**Work Description:** Consolidated**Payer Information****Company/Facility Name:** WGI**Invoice To:** Sydney Weaver  
2021 East 5th Street, Suite 200

Austin TX 78702

**Phone No.:** (512)669-5560**Invoice Amount:** \$99,999.00**Additional Information****Department Name:** Development Services Department**Invoice Issued By:** Adrian Moreno**Invoice Details**

	Internal Ref. No.	Address	Comments	Amount
FAO Description Fee in Lieu of Land (Parks)	12587164	98 RED RIVER ST	2 of 4 ABS portal payment	\$99,999.00
FAO Codes	8721-8607-0640-4148			
<b>TOTAL INVOICED:</b>				<b>\$99,999.00</b>
<b>TOTAL PAID:</b>				<b>\$99,999.00</b>

The invoiced fees are valid through September 30, 2022, and may require update thereafter.





**City Of Austin**  
**P.O. Box 1088, Austin, Texas 78767**  
**INVOICE**

**Invoice No.:** 7568995**Description:** Site Plan**Sub Description:** Site Plan  
Administrative**Invoice Date:** 03/03/2022**Work Description:** Consolidated**Payer Information****Company/Facility Name:** WGI**Invoice To:** Sydney Weaver  
2021 East 5th Street, Suite 200

Austin TX 78702

**Phone No.:** (512)669-5560**Invoice Amount:** \$99,999.00**Additional Information****Department Name:** Development Services Department**Invoice Issued By:** Adrian Moreno**Invoice Details**

	Internal Ref. No.	Address	Comments	Amount
FAO Description Fee in Lieu of Land (Parks)	12587164	98 RED RIVER ST	3 of 4 ABS portal payment	\$99,999.00
FAO Codes	8721-8602-0640-4148			
<b>TOTAL INVOICED :</b>				<b>\$99,999.00</b>
<b>TOTAL PAID :</b>				<b>\$99,999.00</b>

The invoiced fees are valid through September 30, 2022, and may require update thereafter.



**City Of Austin**  
**P.O. Box 1088, Austin, Texas 78767**  
**INVOICE**

**Invoice No.:** 7568992**Description:** Site Plan**Sub Description:** Site Plan  
Administrative**Invoice Date:** 03/03/2022**Work Description:** Consolidated**Payer Information****Company/Facility Name:** WGI**Invoice To:** Sydney Weaver  
2021 East 5th Street, Suite 200

Austin TX 78702

**Phone No.:** (512)669-5560**Invoice Amount:** \$69,688.42**Additional Information****Department Name:** Development Services Department**Invoice Issued By:** Adrian Moreno**Invoice Details**

	Internal Ref. No.	Address	Comments	Amount
FAO Description Fee in Lieu of Land (Parks)	12587164	.98 RED RIVER ST	4 of 4 ABS portal payment	\$69,688.42
FAO Codes	8721-8607-0640-4148			
<b>TOTAL INVOICED :</b>				<b>\$69,688.42</b>
<b>TOTAL PAID :</b>				<b>\$69,688.42</b>

The invoiced fees are valid through September 30, 2022, and may require update thereafter.



**City Of Austin**  
*P.O. Box 1088, Austin, Texas 78767*  
**INVOICE**

**Invoice No.:** 7535943**Description:** Site Plan**Sub Description:** Site Plan  
Administrative**Invoice Date:** 01/10/2022**Work Description:** Consolidated**Payer Information****Company/Facility Name:** WGI**Invoice To:** Sydney Weaver  
2021 East 5th Street, Suite 200

Austin TX 78702

**Phone No.:** (512)669-5560**Invoice Amount:** \$68,443.70**Additional Information****Department Name:** Development Services Department**Invoice Issued By:** Robynne Heymans**Invoice Details**

	Internal Ref. No.	Address	Comments	Amount
FAO Description Park Development fee	12587164	.98 RED RIVER ST		\$68,443.70
FAO Codes 8722-8607-0641-4148				
<b>TOTAL INVOICED:</b>				<b>\$68,443.70</b>
<b>TOTAL PAID:</b>				<b>\$68,443.70</b>

The invoiced fees are valid through September 30, 2022, and may require update thereafter.



## MEMORANDUM OF UNDERSTANDING

The purpose of this Memorandum of Understanding (MOU) is to formally acknowledge the funding and operation and maintenance strategies that Austin Convention Center (Convention Center), Watershed Protection Department (Watershed), and Waterloo Greenway Conservancy (Conservancy, formerly known as Waller Creek Conservancy) have agreed upon to design, construct, and maintain the water quality pond (Pond) located on City of Austin property at the southeast corner of Red River Street and East 3<sup>rd</sup> Street adjacent to Waller Creek. The Pond will be constructed under the Waterloo Greenway The Confluence project (formerly Creek Delta) sponsored by Watershed, Parks and Recreation Department and the Conservancy, currently filed under City of Austin records as the Waller Creek District - Creek Delta Project (CIP Project No. 12861.002). The Convention Center will be a signing party for the Waller Creek District Operations and Maintenance Agreement (WCD O&M Agreement) which will be completed prior to construction of the Pond.

### 1. Design and Construction of Improvements

- Definition of the "Improvements": Conversion of the existing wet pond to a fully functioning biofiltration pond, including walls, culverts, weirs, pipes, outlet structures, rock rip rap, storm water manhole modifications, filtration media, soils, vegetation, and other components, together with other related landscaping amenities, as applicable, as shown on the attached site plan sheets.
- The completed Improvements will bring the Convention Center site plan into compliance with current City of Austin water quality code standards.
- Watershed, in partnership with the Conservancy, is responsible for design and construction management of all Improvements.
- Convention Center will act as a sponsoring party and is responsible for review and comment of the design documents at key milestones and for coordination during the construction process.

### 2. Costs and Reimbursements of Improvements

- Watershed will fully fund the design and bidding phases of the Pond Improvements as part of The Confluence project.
- The estimated construction cost for the pond is \$2,550,000. Watershed will be responsible for \$2,050,000 of the cost of the Improvements and Convention Center will be responsible for \$500,000 of the cost of the Improvements. Conservancy will not be contributing any funding towards design and construction. The Watershed contribution will be reimbursed with federal funds from the U.S. Army Corps of Engineers (USACE), as outlined in the Project Partnership Agreement between USACE and Watershed dated September 30, 2022.

- Should the construction cost estimate change, a new MOU may be required to reevaluate the funding strategy.
3. Ownership and Maintenance of Improvements
- The pond is located on City of Austin property that is currently stewarded by the Convention Center. The Convention Center will remain the steward department of the property.
  - The pond is a Convention Center asset that is a code requirement of the existing Convention Center site development permit (Original Permit SP-90-0029C, Convention Center Expansion SP-00-2088C).
  - After the appropriate City department issues a Letter of Acceptance for the pond improvements, the Convention Center will own and be obligated to perform all ongoing maintenance responsibilities for the Improvements in perpetuity in accordance with all governmental and regulatory laws.
  - Maintenance Responsibilities. General framework of responsibilities to be further defined in the WCD O&M Agreement.
    - a. Inspections: Convention Center responsibility. WPD will assist with developing inspection checklists and schedules.
    - b. Day to Day Maintenance: Convention Center responsibility. Includes mowing and trash pick-up in and around the pond.
    - c. Annual Maintenance and Incidental Repairs: Convention Center responsibility.
    - d. Landscaping and Pond Plantings: Convention Center responsibility. Conservancy may perform select planting work and the Convention Center will provide cost reimbursement.
    - e. Elevated Trail, Lighting, and Appurtenances: Waterloo Greenway Conservancy responsibility.

## POINTS OF CONTACT

For purposes of this MOU, the point of contact for each party is as follows:

Austin Convention Center:  
Taje Allen, Assistant Director  
Austin Convention Center  
500 E. Cesar Chavez  
Austin, Texas, 78701  
512-404-4320

Watershed Protection Department:  
Kristin Pipkin, Project Management Supervisor  
Watershed Protection Department  
505 Barton Springs Road, 12<sup>th</sup> Floor  
Austin, Texas, 78704  
(512) 974-3315

Waterloo Greenway Conservancy:  
John Rigdon, Director of Planning and Design  
1111 Red River Street  
Austin, TX 78701  
(512) 541-3520 ext. 112



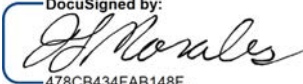
## ACCEPTED BY CITY OF AUSTIN

Austin Convention Center

By:  \_\_\_\_\_  
DocuSigned by:  
6D26A68F3A9440B...  
Paul Barnes, Deputy Director

Date: 10/18/2022 \_\_\_\_\_

Watershed Protection Department

By:  \_\_\_\_\_  
DocuSigned by:  
478CB434FAB148F...  
Jorge Morales, Director

Date: 10/18/2022 \_\_\_\_\_

## ACCEPTED BY WATERLOO GREENWAY CONSERVANCY

By:  \_\_\_\_\_  
DocuSigned by:  
DA4C9DA12D88453...  
Jesus Aguirre, Chief Executive Officer

Date: 10/11/2022 \_\_\_\_\_

## Pond Site Plan Sheets

**WATERLOO  
GREENWAY  
CREEK DELTA**  
VOLUME 3  
AUSTIN, TEXAS

**CLIENT**  
City of Austin • Watershed Protection  
City of Austin • Parks and Recreation Department  
Watershed Greenway

**LANDSCAPE ARCHITECT**  
Michael Van Valkenburgh Associates Inc.  
Landscape Architects  
16 Court Street, 11th Floor  
Brooklyn, New York 11241

**LOCAL LANDSCAPE ARCHITECT**  
dwg.  
9126 Congress Avenue Austin, TX

**HYDROLOGIST**  
LimnoTech  
501 Avis Drive  
Ann Arbor, MI 48108

**BRIDGE DESIGN / STRUCTURAL  
ENGINEERING**

**Architectural Engineers Collaborative**  
3800 N. Lamar Boulevard, Suite 330  
Austin, Texas 78756

**CIVIL ENGINEER**  
Wantman Group, Inc.  
2021 East Fifth Street, Suite 200  
Austin, TX 78702

**GEOTECHNICAL DESIGN**  
Terracott  
5307 Industrial Oaks Blvd., Suite 160  
Austin, TX 78749

**MEP ENGINEER**  
EEA Consulting Engineers  
6615 Vantage Ranch Road, Suite 204  
Austin, TX 78749

**LIGHTING DESIGN**  
Tillett Lighting Design Associates  
15 Madden Lane #508  
New York, NY 10038

**IRRIGATION**  
James Pole Irrigation Consultants  
100 N. Locust, Suite #3  
Denton, TX 76201


 SUSTAINABLE SITES PROJECT  
 VOLUME 3

DATE	REVISION
07/28/20	ADD NO. 1

[illegible]

POND SITE PLAN

CS1

1

10 CFS. W.S.E.  
 Curb / Edge of Pavement  
 Existing Building Face

OVERHEAD UTILITY LINE  
WATER LINE  
WASTEWATER LINE  
OVERHEAD UTILITY LINE  
UNDERGROUND ELECTRIC  
GAS LINE  
WOOD FENCE

SCALE 1/8" = 1'-0"

HERITAGE TREE W/ TAG

TRILL WILL  
SON  
UTILITY / LIGHT POLE  
MAINTENANCE TIE-OFF FOUNDATION

6-  
CITY WIRE  
TRAFFIC SIGNAL  
ELECTRIC MANHOLE  
ELEC. / TELE. FEEDER  
ELECTRIC TRANSFORMER PAD  
GAS LINE MARKER  
GAS METER  
WASTEWATER MANHOLE

00%                                                                                                                                 

BACKFLOW PREVENTER  
STORM DRAINAGE INLET  
STORM DRAIN MANHOLE  
ACCESSIBLE (ADA) & INTERNAL  
CIRCULATION ROUTE

DEMO NOTE: REFERENCE SELECTIVE SIZE DEMONSTRATION SERIES TO CONFIRM EXTENT OF DEMONSTRATION WORK
---

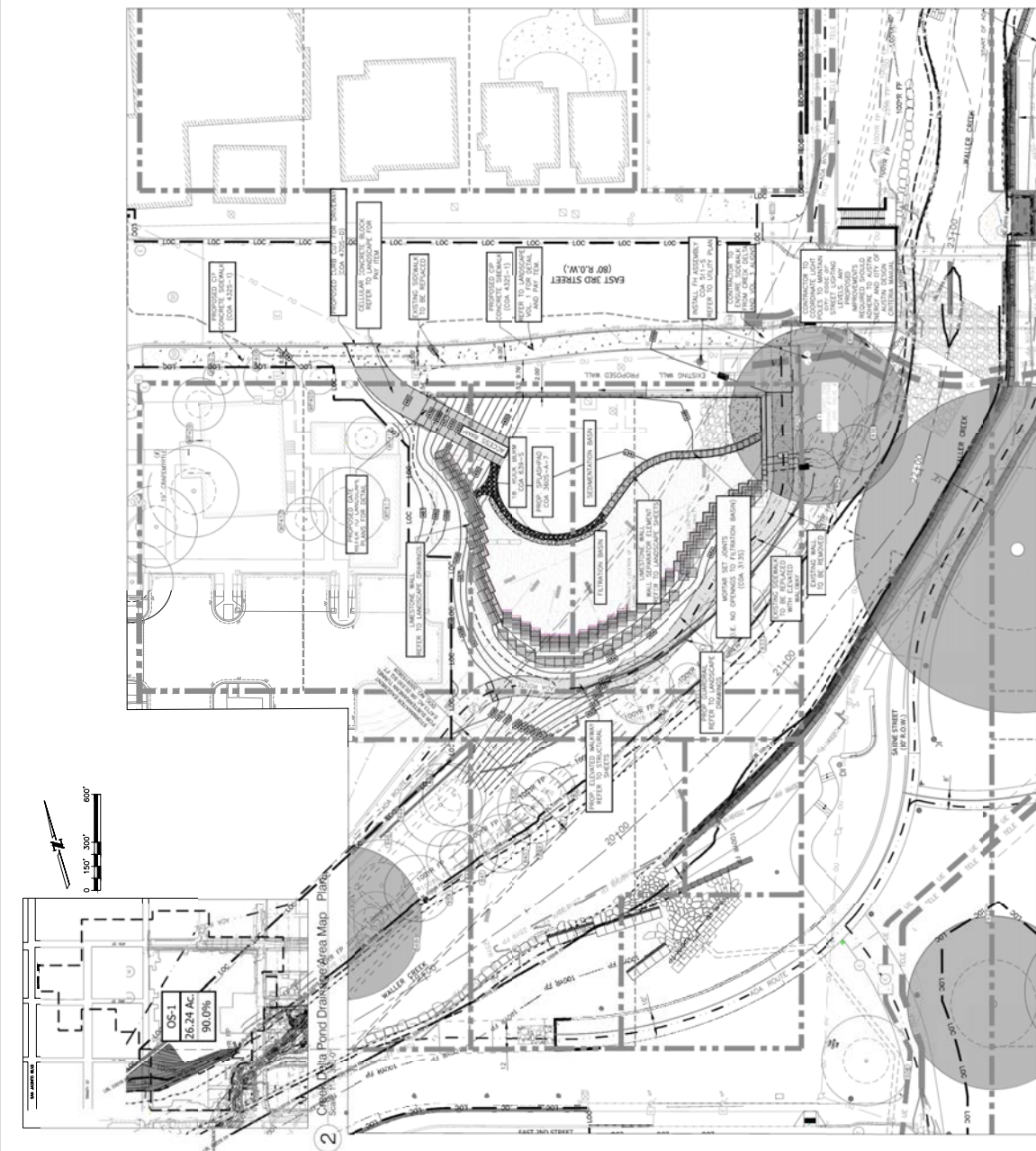
**NOTES:**  
1. ALL ITEMS ARE TO BE FURNISHED & INSTALLED

2. ALL SITE DIMENSIONS ARE TO FACE OF CURB. CENTER OF STRIPING, AND PROPERTY LINE UNLESS OTHERWISE NOTED.
3. LIMITS OF CONSTRUCTION ARE SHOWN ON THE EROSION & SEDIMENTATION CONTROL PLAN(S).

4. NOTE: UNDERSTANDINGS AND FIRST UPDATES  
INFORMATION IS FOR REFERENCE ONLY. REFER  
TO MICHAEL VAN VALKENBURGH ASSOCIATES INC  
(MVA) LAYOUT AND GRADING PLANS FOR  
CONSTRUCTION INFORMATION.

5. ALL EXTERIOR LIGHTING WILL BE FULL CUT-OFF  
AND FULLY SHIELDED IN COMPLIANCE WITH  
SUBCHAPTER E. SEE FIGURE 34 ON SHEET

C-502



**WATERLOO  
GREENWAY  
CREEK DELTA  
VOLUME 3**  
AUSTIN, TEXAS

**CLIENT**  
City of Austin - Watershed Protection  
City of Austin - Parks and Recreation Department  
Watershed Greenway

**LANDSCAPE ARCHITECT**

Michael Van Velsor  
18 Court Street, 11th Floor  
Brooklyn, New York 11201

**LOCAL LANDSCAPE ARCHITECT**

9120 Congress Avenue, Suite 200  
Austin, Texas 78751

**HYDROLOGIST**

Limnitech  
10000 N. Loop West, Suite 400  
Austin, Texas 78751

**BRIDGE DESIGN / STRUCTURAL  
ENGINEERING**

Architectural Engineers Collaborative  
3800 N. Loop West, Suite 350  
Austin, Texas 78751

**CIVIL ENGINEER**

2021 East FM Street, Suite 200  
Austin, Texas 78702

**GEOTECHNICAL DESIGN**

5307 Industrial Blvd., Suite 100  
Austin, Texas 78756

**MEP ENGINEER**

ESA Consulting Engineers  
6615 N. Loop West, Suite 200  
Austin, Texas 78751

**LIGHTING DESIGN**

Triad Lighting Design Associates  
15 Hudson Lane #508  
New York, NY 10028

**IRRIGATION**

James R. Smith & Associates  
100 W. Loop West, Suite 400  
Dallas, Texas 75201



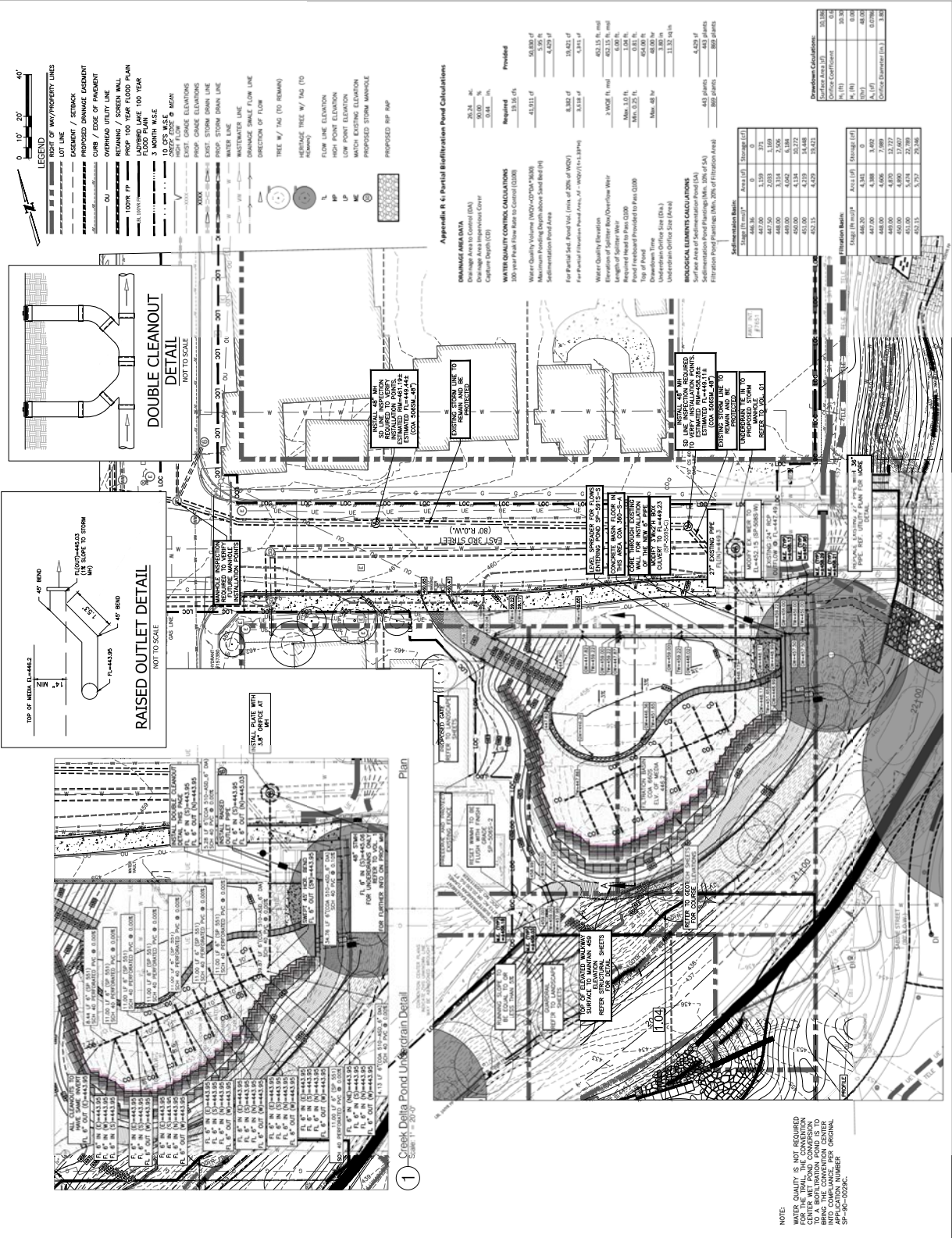
**Sustainable Sites Project**  
**VOLUME 3**  
**100% Construction Documents**

**GRADING & DRAINAGE PLAN  
POND**

**DATE** 02.16.2022  
**SCALE** 1"=20'  
**CHECKED BY** WEL  
**DATE** 02.16.2022

**JOB NUMBER** 10003.34  
**SHEET NO.** 297 of 348

**CG114**



NOTE:  
WATER QUALITY IS NOT REQUIRED  
FOR THIS POND. THE POND IS A  
CENTER WET POND CONVERSION  
AND DOES NOT REQUIRE A  
BRING THE CONVENTION CENTER  
AND CONVENT CENTER  
SP-90-0029C.



**WATERLOO  
GREENWAY  
CREEK DELTA  
VOLUME 3**  
AUSTIN, TEXAS

**CLIENT**  
City of Austin - Watershed Protection  
City of Austin - Parks and Recreation Department  
Watershed Greenway

**LANDSCAPE ARCHITECT**  
Michael Van Valkenburgh Associates Inc.  
18 Court Street, 11th Floor  
Brooklyn, New York 11241

**LOCAL LANDSCAPE ARCHITECT**  
9126 Congress Avenue, Austin, TX  
78751

**HYDROLOGIST**  
Linn Tech  
3101 Jolly Road  
Austin, TX 78745

**BRIDGE DESIGN / STRUCTURAL**  
Architectural Engineers Collaborative  
3800 N. Capital of Texas Hwy, Suite 300  
Austin, Texas 78756

**CIVIL ENGINEER**  
2001 East 7th Street, Suite 200  
Austin, TX 78702

**GEOTECHNICAL DESIGN**  
3307 Industrial Oaks Blvd., Suite 160  
Austin, TX 78745

**MEP ENGINEER**  
EEA Consulting Engineers  
6615 Van Hook Road, Suite 200  
Austin, TX 78720

**LIGHTING DESIGN**  
Lighting Design  
15 Hudson Lane #508  
New York, NY 10028

**IRRIGATION**  
James R. Rouse & Associates  
100 W. Lovell, Suite #  
Denver, TX 78011

**SEAL**  
Texas Board of Architectural Examiners  
Firm Registration Number: BR 2364

**STATUS**  
**VOLUME 3**  
100% Construction Documents

**REVISED**  
NO. DATE BY  
1 08/29/2022 JWG

**DRAWING TITLE**  
LANDSCAPE PLANTING  
PLAN - TREES - POND

**JOB NUMBER**  
1308334

**DATE**  
08/29/2022

**SCALE**  
AS SHOWN

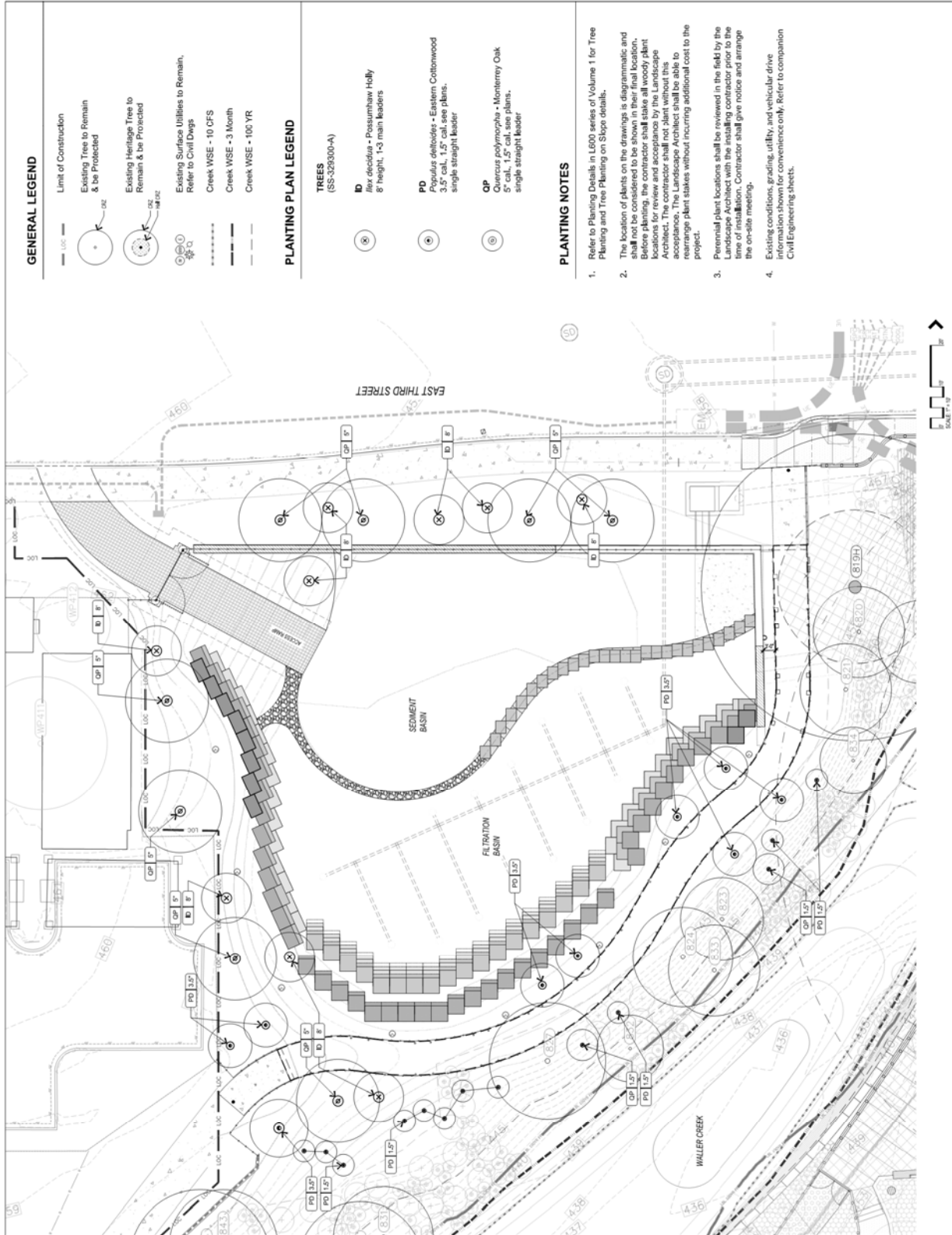
**CHECKED BY**  
JWG

**DATE**  
08/29/2022

**PROJECT**  
Sustainable SFES Project

**SHEET NO.**  
17 OF 35

**L311**



**WATERLOO  
GREENWAY  
CREEK DELTA**  
VOLUME 3

AUSTIN, TEXAS

**CLIENT**

City of Austin - Watershed Protection  
City of Austin - Parks and Recreation  
City of Austin - Water Conservation Department  
Waterloo Greenway

**DATE**  
07/17/2023

**PROJECT**  
Sustainable Sites Project

**VOLUME**  
Project 3

**100% Construction Documents**

**LANDSCAPE ARCHITECT**

Michael J. Hargrave, AIA  
16 Court Street, 11th Floor  
Austin, Texas 78701  
512.476.1141

**LOCAL LANDSCAPE ARCHITECT**

9126 Congress Avenue Austin, TX 78701

**HYDROLOGIST**

521 West 10th  
Austin, Texas 78701

**BRIDGE DESIGN / STRUCTURAL ENGINEERING**

Architectural Engineering  
3000 N. Lamar Boulevard, Suite 200  
Austin, Texas 78756

**CIVIL ENGINEER**

Westman Group, Inc.  
10000 N. Lamar Boulevard, Suite 200  
Austin, TX 78753

**GEOTECHNICAL DESIGN**

5307 Industrial Oaks Blvd., Suite 160  
Austin, TX 78746

**MVP ENGINEER**

EGS Engineering  
6013 Wright Ranch Road, Suite 200  
Austin, TX 78730

**LIGHTING DESIGN**

Titan Lighting Design Associates  
6013 Wright Ranch Road, Suite 200  
New York, NY 10028

**IRIGATION**

James Palk Irrigation Consultants  
1500 N. Lamar, Suite #3  
Austin, Texas 78703

**TESTS**

Tests Based of Architectural Examinations  
From Registered Professional Engineer  
07/17/2023



**JOHN NUMBER**  
1009334

**DATE**  
06/29/2023

**SCALE**  
AS SHOWN

**DRAWN BY**  
DWG

**LANDSCAPE ARCHITECT**

Michael J. Hargrave, AIA  
16 Court Street, 11th Floor  
Austin, Texas 78701  
512.476.1141

**LOCAL LANDSCAPE ARCHITECT**

9126 Congress Avenue Austin, TX 78701

**HYDROLOGIST**

521 West 10th  
Austin, Texas 78701

**BRIDGE DESIGN / STRUCTURAL ENGINEERING**

Architectural Engineering  
3000 N. Lamar Boulevard, Suite 200  
Austin, Texas 78756

**CIVIL ENGINEER**

Westman Group, Inc.  
10000 N. Lamar Boulevard, Suite 200  
Austin, TX 78753

**GEOTECHNICAL DESIGN**

5307 Industrial Oaks Blvd., Suite 160  
Austin, TX 78746

**MVP ENGINEER**

EGS Engineering  
6013 Wright Ranch Road, Suite 200  
Austin, TX 78730

**LIGHTING DESIGN**

Titan Lighting Design Associates  
6013 Wright Ranch Road, Suite 200  
New York, NY 10028

**IRIGATION**

James Palk Irrigation Consultants  
1500 N. Lamar, Suite #3  
Austin, Texas 78703

**TESTS**

Tests Based of Architectural Examinations  
From Registered Professional Engineer  
07/17/2023



**JOHN NUMBER**  
1009334

**DATE**  
06/29/2023

**SCALE**  
AS SHOWN

**DRAWN BY**  
DWG

**LANDSCAPE ARCHITECT**

Michael J. Hargrave, AIA  
16 Court Street, 11th Floor  
Austin, Texas 78701  
512.476.1141

**LOCAL LANDSCAPE ARCHITECT**

9126 Congress Avenue Austin, TX 78701

**HYDROLOGIST**

521 West 10th  
Austin, Texas 78701

**BRIDGE DESIGN / STRUCTURAL ENGINEERING**

Architectural Engineering  
3000 N. Lamar Boulevard, Suite 200  
Austin, Texas 78756

**CIVIL ENGINEER**

Westman Group, Inc.  
10000 N. Lamar Boulevard, Suite 200  
Austin, TX 78753

**GEOTECHNICAL DESIGN**

5307 Industrial Oaks Blvd., Suite 160  
Austin, TX 78746

**MVP ENGINEER**

EGS Engineering  
6013 Wright Ranch Road, Suite 200  
Austin, TX 78730

**LIGHTING DESIGN**

Titan Lighting Design Associates  
6013 Wright Ranch Road, Suite 200  
New York, NY 10028

**IRIGATION**

James Palk Irrigation Consultants  
1500 N. Lamar, Suite #3  
Austin, Texas 78703

**TESTS**

Tests Based of Architectural Examinations  
From Registered Professional Engineer  
07/17/2023

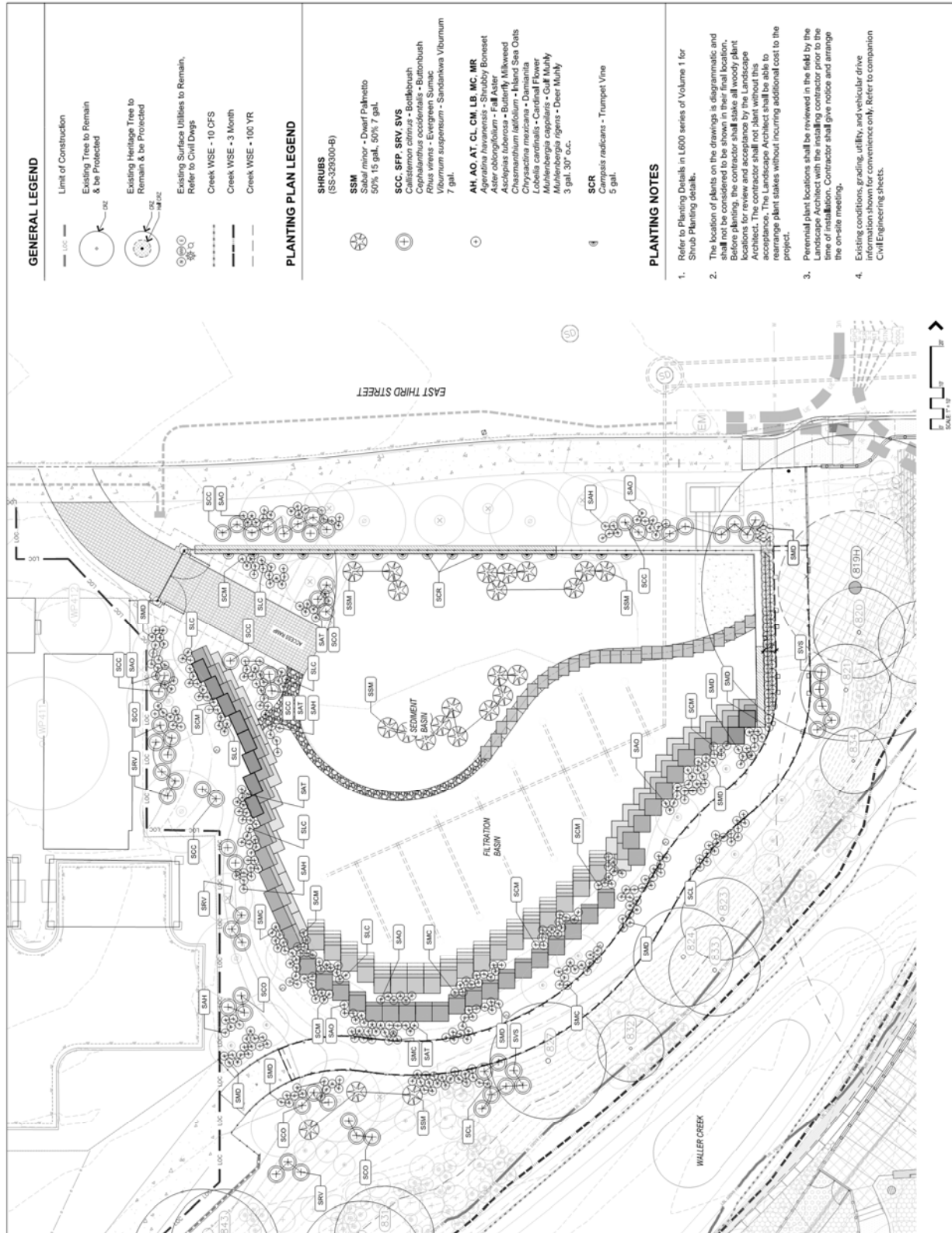


**JOHN NUMBER**  
1009334

**DATE**  
06/29/2023

**SCALE**  
AS SHOWN

**DRAWN BY**  
DWG







## EXHIBIT "G"

## M/WBE REQUIREMENTS

- (a) The Managing Party shall comply with the applicable standards and principles of the **M/WBE Program Ordinance** in the design and construction of Projects, provided, however, Contractors and their subcontractors under contracts executed and delivered by the Conservancy as of the date of this Agreement for the scope of work contemplated in the Design Plan approved by City Council shall not be required to comply with this Exhibit G. A change in the scope of work or Contractors or subcontractors, including adding Contractors or subcontractors shall require compliance with this Exhibit G. Prior to any changes or additions the Managing Party shall consult with and provide SMBR information regarding the proposed change in scope or change or deletions of Contractors or subcontractors to determine the necessary steps to achieve compliance with the M/WBE Program.

With respect to any design or construction projects for a Project, the Contractors shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program Ordinance and rules. Before advertising a bid for any portion of the design or construction work, the Managing Party shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Managing Party and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set M/WBE participation goals for each Project as provided in City Code Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be modified, amended or replaced. The Director shall have 10 Business Days from receipt of a bid package from the Managing Party in order to evaluate and determine the required level for utilization of M/WBE project or phase-specific goals or subgoals, and shall notify the Managing Party in writing of the Director's determination.

In an effort to meet the gender and ethnic-specific M/WBE utilization goals, the Managing Party shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. The Managing Party may seek the assistance of SMBR in these outreach efforts as described in paragraph (b) below.

For any year in which the Managing Party, the Contractors fail to meet each of the goals or subgoals established by the Director, the Managing Party, the Contractors must demonstrate good faith efforts to meet the goals as described in the M/WBE Program Ordinance. The Managing Party shall submit documentation demonstrating its own and

the Contractors' good faith efforts to meet the goals as is required under the following paragraph (d). If the Managing Party provides documentation to SMBR evidencing its own and its Contractors' good faith efforts, the Managing Party shall be deemed in compliance with this paragraph (a). Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require the Managing Party to modify, nullify or abrogate any contracts that the Managing Party has entered into before the Effective Date of this Agreement.

- (b) The Managing Party shall apprise SMBR when the Managing Party desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals. This assistance may include providing a list of certified M/WBE firms from which the Managing Party may solicit or cause the Contractors to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Managing Party, its Contractors in soliciting M/WBE firms to provide bids. The Managing Party is not required to solicit participation during a period in which the Managing Party is not engaged in designing and/or constructing a Project, but rather, the Managing Party is required to incorporate the standards and principles of the M/WBE Program Ordinance including the foregoing M/WBE utilization goals into its development process as and when such process exists in connection with a Project.
- (c) The Managing Party shall provide monthly reports to SMBR no later than the 10<sup>th</sup> day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the Projects; and (ii) a summary of the Managing Party's efforts to implement the standards and principles of the M/WBE Program Ordinance. SMBR shall provide the forms to be used by the Managing Party in submitting such reports.
- (d) Within thirty (30) days of receipt of the Managing Party's final monthly report (as is required under paragraph (e) above for the preceding year, January 1<sup>st</sup> through December 31<sup>st</sup> (the "**SMBR Compliance Period**"), SMBR shall determine whether the Managing Party is in compliance with the requirements of this **Exhibit "G"**.



Waller Creek Project  
Approved Consultant List

Firm	Discipline	MWBE
2 x 4	signage consultant	
Access Partnership	accessibility specialist	
ACI Consulting	environmental consulting	
Altieri Sebor Wieber	mechanical, electrical, plumbing	
Altura Solutions	accessibility specialist	
American Construction Investigations	ADA consultant	
Applied Ecological Services	ecologist, bank stabilization	
Architectural Engineers Collaborative	structural engineer	
Arup USA Inc.	AV, Acoustical, lighting, IT, security	
Atelier 10	sustainability consultant	
Benz Resource Group	project management	WBE
Big Red Dog	civil engineering	
Brierly Assoc	geotech engineering	
CCM Consulting Group	construction auditing	
Chan & Partners	civil engr: subsurface utilities	
Charles Marsh Woodruff	geologic consulting	
Construction Specifications, Inc	specifications consultant	
Davey Resource Group	arborist	
Development Strategies	economic development	
Dr W. Todd Watson	plant pathologist	
dwg	landscape architect	
Eckersley Cladding Consultant	exterior cladding	
EEA Consulting	mechanical, electrical, plumbing	
ETM Associates	public space management	
Fluidity Design Consultants	water feature consulting	
GeoSolutions	geotech: slope stability	
Greenberg Consultants	urban design	
Guy Nordenson & Assoc	structural engineer	
Haynes Whaley Associates	structural engineer	
Henshell & Buccellato	waterproofing consultant	
Heritage Title Company	title and easement research	
HNTB	bridge design	
HNTB	traffic engineering	
Holt Engineering	geotech engineering	
Horton Lees Brogden Lighting	lighting	
HR&A	economic development	
Hydrodramatics	water feature consulting	
Israel Berger and Associates	waterproofing consultant	
James Pole Irrigation Consultants	irrigation	
JGL Food Services Consultants	food service consultant	
Joshua Long	geographer	
Lady Bird Johnson Wildflower Center	ecologist, native plantings and management strategies	
Limnotech	hydrologist	
McGray & McGray	site surveying	
Metcalf Williams Stuart & Wolff	land use, zoning	
Michael Van Valkenburgh Assoc	landscape architect	
Olsson Assoc	soil scientist & ecosystem	
Persohn/Hahn Associates	elevator consultant	
Piscatello Design Centre	signage consultant	
ProjectProjects	graphic design	
Reginald Hough, FAIA	architectural concrete consultant	
Rolf Jensen & Associates	code consultant	
Shah Smith and Associates	commissioning agent	
Simpson Gumpertz & Heger	waterproofing consultant	
Skidmore, Owings & Merrill	structural engineer	
Stuart Lynn	cost estimating	
Sustainable Growth Texas	soil biology	
Terracon	geotech engineering	
Theatre Consultants Collaborative	theatre consultants	
Thomas Phifer & Partners	architect	
Tillett Lighting Design	lighting	
Transsolar Inc	sustainability consultant	
Urban Design Group	civil waterworks	WBE
Vermeulens	cost estimating	



## CITY OF AUSTIN

P.O. Box 1088-  
Site Plan Permit

Application Date: 09/10/2019

Site Plan Expiration Date: 09/16/2025

Permit No.: SPC-2019-0400D

Project Name (or description): Waterloo Greenway - Creek Delta

Address or Location Description: 71-1/2 TRINITY ST

Watershed: Waller Creek

Owner of Property: Waterloo Greenway Conservancy,

Address: PO Box 12363 Austin, TX 78711 Austin TX

Owner's Representative: Ian Williams WGI, (512) 669-5560

Address: 2021 E 5TH STREET Suite 200 AUSTIN TX 78702

Legal Description: See page 2.

**PERMIT IS HEREBY ISSUED FOR:**

Proposing to build a pathway with creek restoration and construction of bridges along Waller Creek from Lady Bird Lake to 4th St. This will include all necessary improvements for access, utility services, grading and drainage.

The project is located within the Waller Creek watershed and is subject to all watershed protection regulations as set forth in Chapter 25 of the City of Austin Code of Ordinances. This project is located within the City's Full-Purpose jurisdiction.

**CONDITIONS OF PERMIT**

It is agreed that the proposed development shall be performed and completed in accordance with the plans and specifications approved by the City of Austin Standard Specifications and Code requirements, and State of Texas construction safety statutes. All development approved by this permit is subject to the inspection and control of the City of Austin.

It is the responsibility of the permit holder to identify all utilities in the work area and to notify each utility of the scope of work in the immediate area of the utilities.

**ENGINEER'S CERTIFICATION:** Inspection and a "Certification of Completion" by a Texas Licensed Engineer is required for the development approved by this permit. No Certificate of Occupancy may be approved until the Engineer's Certification is filed. The engineer is responsible for the adequacy of the plans submitted with this application.

Signature of Applicant Bradley J. Lingg For Owner Waterloo Greenway Conservancy Date 9/16/2022

Permit Approved by City of Austin [Signature] Date 9/16/22





**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT**  
**P. O. BOX 17300**  
**FORT WORTH, TEXAS 76102-0300**

July 13, 2022

Regulatory Division

SUBJECT: Project Number SWF-2019-00422, Creek Delta-Waller Creek Restoration Project

Mr. Jesús Aguirre  
Waterloo Greenway Conservancy  
CEO  
211 E. 7th Street, Suite 712  
Austin, Texas 78701  
[jaquirre@waterloogreenway.org](mailto:jaquirre@waterloogreenway.org)

Dear Mr. Aguirre:

This letter is in regard to information received November 15, 2019, and subsequent information received January 21, August 25, December 22, 2020, February 8, April 6, May 20, May 26, June 24, July 6, and July 12, 2022, concerning a proposal by Waterloo Greenway Conservancy for the restoration of approximately 2,672 feet of Waller Creek located in the City of Austin, Travis County, Texas. This project has been assigned Project Number SWF-2019-00422. Please include this number in all future correspondence concerning this project.

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. USACE responsibility under Section 10 of the Rivers and Harbors Act of 1899 is to regulate any work in, or affecting, navigable waters of the United States. Based on the description of the proposed work, and other information available to us, we have determined this project will involve activities subject to the requirements of Section 404.

We have reviewed this project under the pre-construction notification procedures of Nationwide Permit General Condition 32 (Federal Register, Vol. 86, No. 245, Monday, December 27, 2021). We have determined the discharge of dredged or fill materials into waters of the United States associated with this project is authorized by Nationwide Permit 25 for Structural Discharges and Nationwide Permit 27 for Aquatic Habitat Restoration, Enhancement, and Establishment Activities. To use these permits, the permittee must ensure the work is in compliance with the specifications and conditions for the permits listed above, found at <https://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-General-Permits/>,

and the special conditions listed below. Additionally, all activities must comply with the water quality certification conditions of the Texas Commission on Environmental Quality (TCEQ) located at

[https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/General%20Permitting/TX\\_401\\_cert.pdf?ver=rle8wtu6MRCA2s6Q4QQMg%3d%3d](https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/General%20Permitting/TX_401_cert.pdf?ver=rle8wtu6MRCA2s6Q4QQMg%3d%3d).

The special conditions are as follows:

- 1) As detailed in the scope of work titled "Archeological Monitoring for the Creek Delta-Waller Creek Restoration Project" from Pape-Dawson Engineers dated June 24, 2022, the permittee shall ensure that a qualified archeologist is on site during all stages of construction. The permittee shall perform work within the area of potential effects (APE) as defined in the scope of work dated June 24, 2022; any deviations to the APE will require consultation with USACE and the THC.
- 2) If any cultural resources, including artifacts, are encountered during construction anywhere within the project, the resources shall be avoided and the permittee shall immediately contact USACE and THC for consultation. The permittee shall not initiate any construction for this undertaking that will affect previously unknown historic properties, including artifacts, until the USACE has verified the requirements of 33CFR325 (Appendix C) and 36 CFR 800. After assessment by the USACE, additional work to protect, avoid, or mitigate impacts to historic properties may be necessary. At the conclusion of the construction with the APE, the permittee shall provide USACE and the THC with a report on the results of the archeological monitoring.
- 3) The permittee shall perform a meeting with construction contractors and review the special conditions of the USACE permit authorizations. USACE will be provided with a copy of the meeting minutes from this meeting within two weeks.
- 4) The permittee shall implement and abide by the restoration plan activities included in the permit application and supplemental information referenced above, prepared by ACI Consulting, dated December 2020. The permittee shall implement the restoration activities concurrently with the construction of the project and complete the initial construction and plantings associated with the work before completion of construction. Completion of all elements of this restoration plan, including monitoring, is a requirement of these permits. Release of monitoring will be dependent upon successful completion of restoration, achieving appropriate TXRAM scores, and meeting the planting success criteria.

Failure to comply with these specifications and conditions invalidates the authorization and may result in a violation of the Clean Water Act.

Our verification for the construction of this activity under these nationwide permits is valid until March 14, 2026, unless prior to that date the nationwide permit(s) is/are suspended, revoked, or modified such that the activity would no longer comply with the terms and conditions of a nationwide permit on a regional or national basis. The USACE will issue a public notice announcing the changes when they occur. Furthermore, activities that have commenced, or are under contract to commence, in reliance on a nationwide permit will remain authorized provided

the activity is completed within 12 months of the date of the nationwide permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). Continued confirmation that an activity complies with the specifications and conditions, and any changes to the nationwide permit(s), is the responsibility of the permittee.

Our review of this project also addressed its effects on threatened and endangered species. Based on the information provided, we have determined this project will not affect any species listed as threatened or endangered by the U.S. Fish and Wildlife Service within our permit area. However, please note you are responsible for meeting the requirements of General Condition 18 on endangered species.

The permittee must sign and submit to us the enclosed certification that the work, including any proposed mitigation, was completed in compliance with the nationwide permits. The permittee should submit the certification within 30 days of the completion of work.

These permits should not be considered as an approval of the design features of any activity authorized or an implication that such construction is considered adequate for any purpose intended. It does not authorize any damages to private property, invasion of private rights, or any infringement of federal, state, or local laws or regulations.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please refer to our website at <http://www.swf.usace.army.mil/Missions/Regulatory> or contact Mr. Frederick J. Land at the address above, by telephone (817) 886-1729, or by email [fred.j.land@usace.army.mil](mailto:fred.j.land@usace.army.mil), and refer to your assigned project number.

Please help the regulatory program improve its service by completing the survey on the following website: <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Sincerely,

WALKER.JEN  
NIFER.RILEY  
1027696925

Digitally signed by  
WALKER.JENNIFER.  
RILEY.1027696925  
Date: 2022.07.13  
14:49:50 -05'00'

For: Brandon W. Mobley  
Chief, Regulatory Division

Enclosure

Copy Furnished:

Mr. Kevin Ramberg  
[kramberg@aci-group.net](mailto:kramberg@aci-group.net)

**PERMIT COMPLIANCE CERTIFICATION**

U.S. Army Corps of Engineers Project Number: SWF-2019-00422

Type of Nationwide: NWP 25 and 27

Name of Permittee: Waterloo Greenway Conservancy  
CEO  
Austin, Texas, 78701

Date of Issuance: July 13, 2022

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following email address:

[CESWF-Compliance@usace.army.mil](mailto:CESWF-Compliance@usace.army.mil)

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with these permits you are subject to permit suspension, modification, or revocation.

**I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.**

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

***TO BE ADDED WITH PHASE  
PLAN ADDENDUM***



## EXHIBIT N: INSURANCE REQUIREMENTS

EXHIBIT N



## CERTIFICATE OF LIABILITY INSURANCE

MICHVAN-01

MDONOVAN

DATE (MM/DD/YYYY)

5/2/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Ames & Gough 859 Willard Street Suite 320 Quincy, MA 02169		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (617) 328-6555 FAX (A/C, No): (617) 328-6888 E-MAIL ADDRESS: boston@amesgough.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Charter Oak Fire Insurance Company A++ (XV)	
		<b>INSURER B:</b> Phoenix Insurance Company A++, XV	
		<b>INSURER C:</b> Travelers Property Casualty Company of America	
		<b>INSURER D:</b> Travelers Indemnity Company, A++, XV	
		<b>INSURER E:</b> Travelers Casualty & Surety Co. of America A++, XV	
		<b>INSURER F:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X	X	68009H708658	5/1/2022	5/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	BA007R16786A	5/1/2022	5/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X		CUP005D158369	5/1/2022	5/1/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB004K673919	5/1/2022	5/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Professional Liab			107084166	5/1/2022	5/1/2023	Per Claim \$ 5,000,000
E				107084166	5/1/2022	5/1/2023	Aggregate \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 All Coverages are in accordance with the policy terms and conditions.

RE: MVVA project #12003 - Waller Creek

Waterloo Greenway and the City of Austin shall be listed as additional insured with respects to general, auto, and umbrella liability where required by written contract. A Waiver of Subrogation and 30 Day Notice of Cancellation is provided in accordance with the policy terms and conditions.

## CERTIFICATE HOLDER

## CANCELLATION

City of Austin P.O. Box 1088 Austin, TX 78767	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>Gared Maxwell</i>
---	---

ACORD 25 (2016/03)

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**Bidding Requirements, Contract Forms and Conditions of the Contract**  
**CERTIFICATE OF INSURANCE**  
Section 00650

This Certificate shall be completed by a licensed insurance agent:

Name and Address of Agency:

Watkins Insurance Group  
PO Box 280  
Marble Falls, TX 78654

Phone: 830-693-3541 / \_\_\_\_\_

Name and Address of Insured:

Jay-Reese Contractors, Inc.  
32780 Ranch Road 12  
Dripping Springs, TX 78620

Phone: 512-829-5360

Prime or Sub-Contractor?: Prime

Name of Prime Contractor, if different from Insured: \_\_\_\_\_

City of Austin Reference:

Project Name: Waller Creek Delta Construction

C.I.P. No.: 12861.002

Project Location: Waller Creek & Lady Bird Lake  
and Extends north to East Fifth Street

Managing Dept.:

Contract No.:

Project Mgr.:

**Insurers Affording Coverages:**

Insurer A: United Fire Group

Insurer B: Texas Mutual Insurance Company

Insurer C: Nautilus Insurance Company

Insurer D: Travelers Lloyd's Insurance Company

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS OF LIABILITY	
A	<b>Commercial General Liability Policy</b> As defined in the Policy, does the Policy provide:	60528096	1/17/2022	1/17/2023	Each Occurrence	\$ 1,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Completed Operations/Products				General Aggregate	\$2,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Contractual Liability				Completed Operations /Products Aggregate	\$2,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Explosion				Personal & Advertising Injury	\$ 1,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Collapse				Deductible or Self Insured Retention	\$ 5,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Underground					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Contractors/ Subcontractors Work					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Aggregate Limits per Project Form CG 2503					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Additional Insured Form - CG 2010 and CG2037					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- 30 Day Notice of Cancellation Form - CG 0205					
C	<b>Pollution/ Environmental Impairment Policy</b>	CPP2028134-13	1/17/2022	1/17/2023	Occurrence	\$ 1,000,000
					Aggregate	\$ 2,000,000

## Certificate of Insurance / 00650

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS OF LIABILITY	
A	<b>Auto Liability Policy</b> As defined in the Policy, does the Policy provide:	60528096	1/17/2022	1/17/2023	CSL	\$1,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Any Auto				Bodily Injury (Per Accident)	\$
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- All Owned Autos				Bodily Injury (Per Person)	\$
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Non-Owned Autos				Property Damage (Per Accident)	\$
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Hired Autos					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Waiver of Subrogation - CA0444					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- 30 Day Notice of Cancellation - CA0244					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Additional Insured - CA2048					
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- MCS 90					
A	<b>Excess Liability</b> <input checked="" type="checkbox"/> Umbrella Form <input type="checkbox"/> Excess Liability Follow Form	60528096	1/17/2022	1/17/2023	Occurrence	\$8,000,000
	Aggregate				\$8,000,000	
B	<b>Workers Compensation and Employers Liability</b> As defined in the Policy, does the Policy provide:	0001126997	1/17/2022	1/17/2023	<input checked="" type="checkbox"/> Statutory	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Waiver of Subrogation - WC420304				Each Accident	\$1,000,000
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- 30 Day Notice of Cancellation - WC420601				Disease - Policy Limit	\$1,000,000
					Disease - Each Employee	\$1,000,000
	<b>Is a Builders Risk or Installation Insurance Policy provided?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					\$
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No -- Is the City shown as loss payee/mortgagee?					
C	<b>Professional Liability</b> As defined in the Policy, does the Policy provide:	CPP2028134-13	1/17/2022	1/17/2023	Each Claim	\$1,000,000
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No -- 30 Day Notice of Cancellation Retroactive Date: <u>1/17/2019</u>				Deductible or Self Insured Retention	\$25,000

This form is for informational purposes only and certifies that policies of insurance listed above have been issued to insured named above and are in force at this time. Notwithstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, insurance afforded by policies described herein is subject to all terms, exclusions and conditions of such policies.

**CERTIFICATE HOLDER:**

City of Austin  
Capital Contracting Office  
P.O. Box 1088  
Austin, Texas 78767

DATE ISSUED: 1/6/2023


AUTHORIZED REPRESENTATIVE SIGNATURE  
Licensed Insurance Agent

**END**



**WATKINS**  
INSURANCE GROUP

December 14, 2022

To Whom It May Concern,

Jay-Reese Contractors, Inc. has every intent to renew all policies as listed on the Certificate of Insurance dated 1/6/2023. The renewal date is unchanged and all policies will renew on 1/17/2023.

Sincerely,

John Aouelle'

WATKINS INSURANCE GROUP